NEW HAMPSHIRE.

Horace French to be postmaster at West Lebanon, in the county of Grafton and State of New Hampshire, in place of Horace French. Incumbent's commission expires May 9, 1906.

NEW YORK.

Volney I. Cook to be postmaster at Belfast, in the county of Allegany and State of New York, in place of Volney I. Cook. Incumbent's commission expired February 10, 1906.

Owen E. Hayes to be postmaster at Camillus, in the county of Onondaga and State of New York. Office became Presidential April 1, 1906.

George Realy to be postmaster at Hancock, in the county of Delaware and State of New York, in place of William A. Hall. Incumbent's commission expires April 30, 1906.

NORTH DAKOTA.

Floyd C. White to be postmaster at Donnybrook, in the county of Ward and State of North Dakota. Office became Presidential January 1, 1906.

OHIO.

W. Sherman Hissem to be postmaster at Loudonville, in the county of Ashland and State of Ohio, in place of W. Sherman Hissem. Incumbent's commission expired February 13, 1906.

Mary Sivalls to be postmaster at Woodville, in the county of Sandusky and State of Ohio. Office became Presidential April 1, 1906.

Enoch S. Thomas to be postmaster at Jackson, in the county of Jackson and State of Ohio, in place of Mark Sternberger, resigned.

PENNSYLVANIA.

Edwin G. McGregor to be postmaster at Burgettstown, in the county of Washington and State of Pennsylvania, in place of Edwin G. McGregor. Incumbent's commission expires May 2, 1906.

Bernard Wendell to be postmaster at Lyndora, in the county of Butler and State of Pennsylvania. Office became Presidential April 1, 1906.

VIRGINIA.

Charles P. Nair to be postmaster at Clifton Forge, in the county of Alleghany and State of Virginia, in place of Charles P. Nair. Incumbent's commission expired March 15, 1906.

WISCONSIN.

Henry Kloeden to be postmaster at Mayville, in the county of Dodge and State of Wisconsin, in place of Charles R. Henderson. Incumbent's commission expired March 5, 1906.

CONFIRMATIONS.

Executive nominations confirmed by the Senate April 5, 1906.

DISTRICT COMMISSIONER.

Henry B. F. Macfarland, of the District of Columbia, to be a Commissioner of the District of Columbia for the term of three years from May 5, 1906.

COLLECTORS OF CUSTOMS.

Benjamin B. Brown, of Pennsylvania, to be collector of customs for the district of Erie, in the State of Pennsylvania.

John A. Merritt, of New York, to be collector of customs for the district of Niagara, in the State of New York.

POSTMASTERS.

COLORADO.

Frank M. Reardon to be postmaster at Victor, in the county of Teller and State of Colorado.

FLORIDA.

William F. Barrett to be postmaster at Dunnellon, in the county of Marion and State of Florida.

GEORGIA.

William F. Boone to be postmaster at Baxley, in the county of Appling and State of Georgia.

De Witt C. Cole to be postmaster at Marietta, in the county of Cobb and State of Georgia.

Henry B. Sutton to be postmaster at Ocilla, in the county of Irwin and State of Georgia.

ILLINOIS.

Harrison P. Nichols to be postmaster at Maywood, in the county of Cook and State of Illinois.

Zachary Taylor to be postmaster at Colfax, in the county of McLean and State of Illinois.

IOWA.

James T. Ellis to be postmaster at Panora, in the county of Guthrie and State of Iowa.

Roman C. White to be postmaster at Glenwood, in the county of Mills and State of Iowa.

MICHIGAN.

Samuel Adams to be postmaster at Bellaire, in the county of Antrim and State of Michigan.

Clayton L. Bailey to be postmaster at Mancelona, in the county of Antrim and State of Michigan.

Thaddeus B. Bailey to be postmaster at Manchester, in the county of Washtenaw and State of Michigan.

J. Mark Harvey, jr., to be postmaster at Constantine, in the county of St. Joseph and State of Michigan.

Richard M. Johnson to be postmaster at Middleville, in the county of Barry and State of Michigan.

Jay C. Newbrough to be postmaster at Greenville, in the county of Montcalm and State of Michigan.

MONTANA.

George W. Huffaker to be postmaster at Helena, in the county of Lewis and Clark and State of Montana.

NEBRASKA.

Frank M. Kimmell to be postmaster at McCook, in the county of Red Willow and State of Nebraska.

NEW HAMPSHIRE.

Frank B. Williams to be postmaster at Enfield, in the county of Grafton and State of New Hampshire.

SOUTH CAROLINA.

B. J. Hammet to be postmaster at Blackville, in the county of Barnwell and State of South Carolina.

WISCONSIN.

Nels Nelson to be postmaster at Washburn, in the county of Bayfield and State of Wisconsin.

WYOMING.

Elmer T. Beltz to be postmaster at Laramie, in the county of Albany and State of Wyoming.

ISLE OF PINES.

The injunction of secrecy was removed April 5, 1906, from Executive Document No. 2, Fifty-ninth Congress, first session, being a letter relating to the Isle of Pines.

HOUSE OF REPRESENTATIVES.

THURSDAY, *April 5, 1906.*

The House met at 12 o'clock noon.

Prayer by the Chaplain, Rev. HENRY N. COUDEN, D. D.

The Journal of the proceedings of yesterday was read and approved.

CELEBRATION OF BIRTH OF BENJAMIN FRANKLIN.

The SPEAKER. The Chair lays before the House, without objection, the following invitation.

The Clerk read as follows:

The American Philosophical Society has the honor to invite the House of Representatives to be represented at the celebration of the two hundredth anniversary of the birth of its founder, Benjamin Franklin, to be held in Philadelphia, on April 17, 18, 19, and 20, 1906.

INDEPENDENCE SQUARE, *November, 1905.*

The SPEAKER. Without objection it will be laid upon the table. By authority of the concurrent resolution of the House and Senate, the Chair appoints the following committee.

The Clerk read as follows:

Mr. OLMSTED of Pennsylvania (chairman), Mr. STEVENS of Minnesota, Mr. COUSINS of Iowa, Mr. WATSON of Indiana, Mr. FASSETT of New York, Mr. HOAR of Massachusetts, Mr. SMITH of Maryland, Mr. POU of North Carolina, Mr. RYAN of New York, and Mr. WATKINS of Louisiana.

EULOGIES ON THE LATE REPRESENTATIVE CASTOR AND REPRESENTATIVE PATTERSON OF PENNSYLVANIA.

Mr. ADAMS of Pennsylvania. Mr. Speaker, I ask unanimous consent for the present consideration of the following order, which I send to the Clerk's desk.

The Clerk read as follows:

Ordered, That the order made in the House March 7, 1906, be amended so as to read: That a session of the House be held on Sunday, April 22, 1906, and that the day be set apart for addresses on the lives, characters, and public services of Hon. GEORGE A. CASTOR and Hon. GEORGE R. PATTERSON, late Representatives from the State of Pennsylvania.

The SPEAKER. Is there objection?

There was no objection.

The order was agreed to.

TERMS OF CIRCUIT AND DISTRICT COURT IN ALABAMA.

Mr. UNDERWOOD. Mr. Speaker, I understand under the order of the House in the debate yesterday there was a bill before the House upon which the previous question was ordered. I think the only question before the House is the question of the division on that proposition.

The SPEAKER. That is unfinished business. The Chair wishes to state that he received this morning a telegram apparently signed by the two Alabama judges, Judge Jones and Judge Toulmin, which the Chair desires to deliver to the gentleman from Alabama [Mr. WILEY].

Mr. WILEY of Alabama. Mr. Speaker, I received a similar telegram, and I rise to ask, the previous question having been ordered, if it would be in order to ask, as a courtesy to myself and to these gentlemen, the two judges in Alabama, that the telegram may be read to the House. I ask unanimous consent that the telegram be read.

The SPEAKER. The gentleman from Alabama asks unanimous consent that the telegram signed by the two Alabama judges, addressed to the Speaker of the House, may be read at this time.

Mr. UNDERWOOD. Mr. Speaker, reserving the right to object, I wish to say this: Yesterday the question was debated before the House. Many Members of the House do not understand it now. I would not object, of course, to the telegram being read by my colleague providing I have an opportunity to state my side of the case.

Mr. WILEY of Alabama. I have no objection to that.

Mr. UNDERWOOD. Mr. Speaker, in lieu of that I will ask unanimous consent that there may now be twenty minutes' debate, ten minutes on each side, and the gentleman from Alabama, my colleague [Mr. WILEY], can read the telegram.

The SPEAKER. The gentleman from Alabama asks unanimous consent for twenty minutes' debate, ten minutes on each side. Is there objection? [After a pause.] The Chair hears none.

Mr. WILEY of Alabama. Mr. Speaker, I ask that the telegram from the two Alabama judges be now read.

The SPEAKER. The gentleman asks that the telegram be read in his time?

Mr. WILEY of Alabama. Yes, sir.

The SPEAKER. The Clerk will read.

The Clerk read as follows:

MONTGOMERY, ALA., *April 5, 1906.*

Hon. JOSEPH G. CANNON,
Speaker of the House of Representatives, Washington, D. C.:

The undersigned, the regular judge and the judge permanently designated under section 591 of the Revised Statutes, on account of the accumulation of business in the northern district of Alabama, beg leave to make the following statement to the House of Representatives: Both of us realize the needs of the southern division of the northern district and have done all in our power to take care of it. The real question is not so much what it needs, but whether, with the present available force of judges, any arbitrary time should be fixed for transacting the business there. Without more aid than available at present, one of us being judge of the middle district and the other judge of the southern district, it is impossible to apportion absolutely six months of open court to Birmingham, in the northern district, without putting it out of our power to properly adjust and attend to the business at Montgomery, Tuscaloosa, Selma, Anniston, Huntsville, and Mobile.

We are advised that the Senate bill, substituted for House bill 16802, will be put upon its passage to-morrow. We did not know that the Senate bill would be taken up in the Senate when it was, and the House bill before the Judiciary Committee of the House was reported to the House before there was opportunity to present objections to its practical operation. As neither bill is now before the Judiciary Committee, and both bills are in the possession of the House, we trust it is proper to address this communication to you as Speaker, and respectfully request that you bring it to the attention of the House before it acts upon the bill to-morrow.

The House and Senate bills, we understand, are identical. Neither bill gives greater power than the existing law for the designation of outside judges, or to force the attendance of the designated judges. The proposed bill substitutes the circuit justice for the circuit judge as the authority to make designations, which can be better done by the latter than the former, since the circuit judge is more conversant with local conditions. It selects the month of September for the beginning of one of the terms. The court formerly met in September and Congress changed the date at the instance of bench and bar, because of the unpleasant weather there at that period.

Within the past twelve months fourteen weeks of court have been held at Birmingham, the designated judge having just finished a month's term there yesterday, and the regular judge now holding court at Montgomery, going thence to Tuscaloosa. Some time since he ordered the setting of the docket at Birmingham, commencing in May, for more than two months' term of court there, which will give Birmingham six months' open court within the past twelve months. During the same period much equity and bankrupt business arising in Birmingham has been transacted in the middle district at Montgomery. Such results are all that can possibly be accomplished under the present bill. Nothing can be accomplished under it which can not better be effected without it, while an arbitrary provision as to a fixed time absolutely for one place will deprive us of much needed discretion and unnecessarily hamper the administration of justice in other localities. That bill will give no practical or permanent relief. We have done and will continue to do all that two judges can, under existing conditions at seven different places, for holding court. We respectfully submit, under these circumstances, that the pending bill ought not to pass.

With great respect, your obedient servants.

THOS. G. JONES.
HARRY T. TOULMIN.

Mr. WILEY of Alabama. Mr. Speaker, I do not care to trespass upon the time, patience, or indulgence of the House with any extended remarks. The telegram just read states fully and accurately. I do not think the House fully understands the character, scope, or meaning of the pending bill, which, upon its face and in its title, is apparently a mild-mannered measure.

Mr. PAYNE. Mr. Speaker, will the gentleman from Alabama [Mr. WILEY] allow me a question right there?

The SPEAKER. Does the gentleman yield?

Mr. WILEY of Alabama. Yes.

Mr. PAYNE. If I understand this bill, it requires that a court be held for six months in the year at Birmingham, and requires the judge to keep the court open whether the business is sufficient to warrant it or not?

Mr. WILEY of Alabama. Yes, sir; that is the proposition, precisely stated.

Mr. PAYNE. There is no amendment or change, nothing that meets that situation except an absolute requirement, whether the other places of the district demand any court or not. Is that true?

Mr. WILEY of Alabama. Yes.

Mr. SHERMAN. Is that all there is of the bill?

Mr. PAYNE. That is all, with the exception that it repeats in another clause the requirement that the judges shall assign a judge to hold court there under certain conditions. Those two things are in the bill. That last, of course, is a reenactment.

Mr. WILEY of Alabama. Now, Mr. Speaker, permit me to repeat that there are three Federal judicial districts in Alabama. The southern district is composed of about thirteen counties, over which Judge Toulmin presides, and who resides in the city of Mobile. Then there are the middle and northern judicial districts, together composed of some fifty-odd counties, presided over by Judge Thomas G. Jones, who resides in the city of Montgomery. In the middle and northern districts of Alabama there are five places designated by law for the holding of the district and circuit courts of the United States, to wit: Montgomery, in the middle district, and Anniston, Tuscaloosa, Birmingham, and Huntsville, in the northern judicial district.

The bill now under consideration makes it mandatory that the judge of the middle and northern districts shall hold court, or provide for the holding of court, for six calendar months, at Birmingham, in each year, whether or not there shall be business enough to justify the holding of such court; and it makes no provision for the holding of the circuit or district courts, for any designated period of time, at the four other places just named in the middle and northern districts, where court, under the law, is expected to be held—that is to say, at Montgomery, Anniston, Tuscaloosa, and Huntsville—the balance of the year, six months only being all the time remaining for holding court at said other places. It leaves the judge no time for recess, for rest, research, or recreation or health. It is an arbitrary fixing of time for one place. Now, it is provided that if the district judge can not hold court at Birmingham the supreme court judge for the fifth circuit shall assign an outside judge to hold court at Birmingham. There is no provision in the bill for such assignment of help anywhere else in these two districts. It goes without saying, therefore, that it is unjust to the other places in the middle and northern districts. Both of the judges of the Federal courts in Alabama protest against the passage of this bill. The Alabama delegation have never been in conference, and, so far as I know, have never been consulted as to its merits or demerits. My colleague [Mr. CLAYTON], who lives in the middle judicial district of Alabama, is not here. He is a member of the House Judiciary Committee. In his necessary absence the bill was rushed through the committee, and no notice given to the other Members of this body from Alabama of the pendency of the bill, or any opportunity afforded any one of us to make known our objections thereto or to amend the same in any particular. From all over my district protests and petitions come pouring in upon us against the enactment of this Senate bill into a law. Here is a telegram that my colleague from Alabama [Mr. TAYLOR] has just handed me to read:

OPELIKA, ALA., *April 5, 1906.*

Hon. WASH. TAYLOR,
Washington, D. C.:

If possible, prevent passage of UNDERWOOD'S United States court bill.

GEORGE P. HARRISON,
President Alabama Bar Association.

Here is another telegram which he has just placed in my possession, which I will read:

BIRMINGHAM, ALA., *April 5, 1906.*

Hon. G. W. TAYLOR,
Washington, D. C.:

Yours 29th received. Oppose bill. Reasons stated in letter.

HARRY T. TOULMIN.

Judge Toulmin, sender of this last telegram, is judge of the southern judicial district of Alabama. Now, Mr. Speaker, I wish to state that this bill came from the Senate, was brought in from the other end of the Capitol without any warning or notice or intimation to any Member from Alabama, so far as I

know, except the gentleman who represents the Birmingham district [Mr. UNDERWOOD]. It is rank and palpable injustice to these two hard-working and honorable judges, and I myself feel constrained earnestly to protest against the passage of the bill.

The proposition, boiled down, is simply this and nothing more, to wit: That it is made imperative, mandatory, that Judge Jones shall hold, or require to be held, court at Birmingham six calendar months in every year, regardless of the fact that there may not be a sufficient volume of business to justify such holding, and regardless, further, of any inconvenience or denial of the right of trial—of due process of law—to the people for whom the law has sought to make provision for the adjudication of their rights of life, liberty, and property at the four other places above mentioned in said middle and northern districts, viz, Montgomery, Anniston, Tuscaloosa, and Huntsville. So long as the law requires court to be held twice a year under one judge, it becomes manifestly a matter of profoundest concern to litigants and lawyers in all these other places outside of Birmingham as to how long a period of time court shall be kept open in these communities for the transaction of the public business—for the trial of causes. At Montgomery, my home town, the docket is burdened with business. Is it fair, equitable, considerate, reasonable, or just that Birmingham shall have the "lion's share" of the time—one-half of each year—which can possibly be devoted to all these five places, leaving only six calendar months to Montgomery, Anniston, Tuscaloosa, and Huntsville, even were it physically possible for a judge to hold court every day in a given year, Sundays excepted? The proposition is selfish, arbitrary, and unfair. It results necessarily that the other four places in these two districts will receive but little, if any, judicial attention. In this connection I beg leave to read the following from the resolutions recently adopted by the Montgomery, Ala., bar:

A fixed provision as to the length of time court shall be held in any one of these places would put it out of the power of the regular judge, and such designated judges as can be had, to equitably apportion and regulate their services according to the needs of the several places in proportion to the litigation demanding attention there. We know that the Hon. Thomas G. Jones, the present judge of the two districts, has not spared himself, and has labored unceasingly, intelligently, ably, and impartially to meet, so far as is in the power of one man, the needs of the several places in the two districts, and fortunately has never been absent from sickness. As long as our Senators and Representatives can not procure the passage of a bill for a regular additional judge, our conviction is that it is far better not to attempt to remedy our trouble by insisting upon an absolute fixed period at any place, during which court shall be kept open there. Each place has the same right to insist upon a fixed time for keeping court open there corresponding to its needs, and any absolute period in which courts must be kept open at any one place ignores the others and would, in our opinion, be unwise and unjust.

I read, by permission, an extract from a letter just to hand from Judge Toulmin touching the bill under consideration, as follows:

A bill to require, by an arbitrary arrangement, court to be held at Birmingham six months in one year is unwise, unnecessary, and unjust. It will not accomplish the objects sought to be attained—that is to say, any permanent and effectual relief on account of the accumulation of business—and will not, in fact, effect any more than is already being done under existing law. Moreover, an arbitrary arrangement of that sort is unjust to the judge or judges who hold court at Birmingham. It leaves no discretion in them, and serves only as a reflection, or to be construed as a reflection, on such judges.

And now, in conclusion, I send to the Clerk's desk and ask to have read, as part of my remarks, the following resolutions just received from the Montgomery and Opelika bars:

MONTGOMERY, ALA., *April 2, 1906.*

The bar of Montgomery passed the following resolutions:

"*Resolved*, That we are opposed to the passage of House bill No. 16802, which fixes a six months' open session of court for the southern division of the northern district of Alabama.

"*Resolved further*, That our Senators and Representatives are hereby respectfully requested to oppose said bill.

"*Resolved further*, That the Representatives in Congress from the counties which compose this judicial district are hereby respectfully requested, if said bill be put upon its passage, to have inserted therein a similar provision as to the time for keeping courts open in the middle district.

"*Resolved further*, That our Senators and Representatives in Congress are earnestly requested to make another effort to procure the passage of the bill recommended by the State Bar Association and by nearly all the local bars of the State for the appointment of an additional judge for these two districts, as we believe it is an absolute necessity and the only feasible or just remedy for the overcrowded state of the dockets, the business of which is constantly increasing.

"*Resolved further*, That a copy of these resolutions be forwarded to the Judiciary Committee of the House of Representatives, the Department of Justice, and to each of our Senators and Representatives in Congress.

"*Resolved further*, That the committee heretofore appointed by this bar to cooperate with other bars for the passage of the bill for an additional judge for the two districts be continued and directed to cooperate with other committees having a like purpose in view."

W. L. MARTIN, *Chairman.*
G. F. MERTINS, *Secretary.*

In accordance with the resolution, copies will be sent immediately to the members of the Judiciary Committee and to the members of the Senate and the House of Representatives.

The bar of Opelika yesterday also passed strong resolutions in opposition to the Underwood bill. They were as follows:

To the Judiciary Committee of the Fifty-ninth Congress:

We, the undersigned, members of the bar at Opelika, in Lee County, Ala., desiring to express our opposition to the bill recently introduced in Congress by Hon. OSCAR W. UNDERWOOD in regard to the time of holding court in the southern division of the northern district of Alabama, do hereby petition Congress and your honorable committee not to pass said bill, as it would be unfair and unjust to the litigants in the other courts of the northern district of Alabama and to the litigants in the middle district of Alabama.

THOMAS D. SAMFORD.
HOUSTON & POWER.
LUM DUKE.
R. B. BARNES.
E. A. BURKE.
H. M. WILSON.
R. C. SMITH.
B. T. PHILLIPS.
T. L. KENNEDY.
C. A. L. SAMFORD.

The three members of the bar who did not sign were absent from the city.

Mr. UNDERWOOD. Mr. Speaker, I want to say to the House before I go to the merits of this bill that yesterday afternoon, after the House adjourned, I heard a rumor that some of the Members believe that this bill was introduced for the purpose of attacking Judge Jones because he had decided certain peonage cases in Alabama. I want to repudiate that statement here. There is no truth in it. I have no unkindly feelings toward Judge Jones. Neither has my district. Those peonage cases did not occur in north Alabama; they were not in my district; none of them were my constituents; we had nothing to do with it; it absolutely was no concern of ours, and we are simply favoring this bill because it is the last resort we have got to get relief for our courts. Now, the situation is this: There are three districts in Alabama, one the southern district—a very small district—presided over by Judge Toulmin, who has comparatively little to do. Then there is the middle district, again in south Alabama, misnamed because it is in southeast and not middle Alabama, presided over by Judge Jones, who lives in Montgomery, in the southern part of the State. Then there is the northern district, with four courts, at Huntsville, Anniston, Tuscaloosa, and Birmingham, being composed of more than half the counties in the State, the great bulk of the business of the State being there; and Judge Jones presides over this district as well as the middle district. If the House has listened to the reading of Judge Jones's telegram it will have noted that he said he could not attend to the business of all these courts in two districts. He said so in his telegram to the Speaker; he says so in the statement that the gentleman from Alabama [Mr. WILEY] filed for him yesterday. Judge Jones says that he needs an additional judge, and he does not want anything done in this matter until he gets an additional judge. Well, I want an additional judge myself; I would be glad to have one. I asked for an additional judge, and the matter was referred to the Attorney-General of the United States, who replied that we had two judges in Alabama and that they were all we needed; that if the business was properly assigned to those two judges they could attend to it, and the Committee on the Judiciary thereupon refused to give us another judge to hold our courts in Alabama.

But they said to me, "If you can redistrict the State or reassign the judges we will do what we can to so rearrange your courts as to enable you to get your business disposed of." We tried to agree on a bill redistricting the State, but as the two judges live in south Alabama, and we did not want to make the lawyers come down a long parallelogram of 300 miles on each side of the State to get to south Alabama, we could not agree on a bill redistricting the State. Then the only other proposition we could make was to provide for the assignment of a judge to the court at Birmingham, where the congested condition of business is. Now, Judge Jones lives in the district of my colleague [Mr. WILEY]. He is there and attends to their business, and there is no congestion there. They can get their cases tried. Birmingham is a large railroad center, with many great corporations. There are many nonresident corporations, and whenever a suit is brought against one of those corporations, if it is a bad case the lawyers often take it to the United States court. The business of the court is congested. You can not get a trial in years, and it is a denial of justice to my people in that they can not get their cases tried. Now, what is this bill? What effect does this bill have? It does not do Judge Jones any harm. It does not make Judge Jones do one particle of work that he does not want to do. It merely provides at Birmingham, where there is more congested business than in any district in the United States, except the courts in the southern district of New York, that there shall be six months of court each year. We have about three months of court now, and this

only provides for three months more of court. If Judge Jones can not hold the court—and I concede he can not hold court the additional three months—he shall certify the fact to the circuit judges, and they, under the general law as it exists to-day, shall assign some judge to come to Birmingham and hold court the other three months. Now, Judge Toulmin's time is not all taken up. He has time to spare. He can be assigned for this purpose, and that is what we expect. We can not divide the State. It is merely a proposition to make it mandatory that the circuit judges shall assign another judge to come to Birmingham and try the business before our courts. Now, that is all there is in the proposition.

Mr. WM. ALDEN SMITH. I would like to inquire of the gentleman from Alabama whether there is indisposition on the part of the Federal judges to do the work or an inability to do the work?

Mr. UNDERWOOD. I admit Judge Jones can not do it. He says himself it would take him seventeen months to do the business in his district. He has got five courts and 65 per cent of the business of those five courts is in the court at Birmingham. But we are not trying to make Judge Jones do this business. We do not force him in the matter; we simply provide by this law—here is the language of the bill—

That whenever the judge for the northern district of Alabama deems it advisable, on account of disability or absence, or of the accumulation of business therein, or for any other cause, that said court should be held by the justice of some other district or circuit court, he shall, in writing, request the presiding justice for the fifth judicial circuit of the United States to assign a judge to hold the term or terms of said court.

Now, we are not making it mandatory on Judge Jones to hold this court. If Judge Jones wants to he can go there and hold the terms of court. I do not think he can. I do not think Judge Jones could attend to his business in the balance of the courts of these districts and go to Birmingham for six months, and this law does not contemplate that. We recognize he can not go there, but we want to have Judge Toulmin or some other judge assigned to go there and hold our court. Now, the stress of business is this: It is difficult to get a trial in that court, and you have got to send somebody else there to preside over these courts. If a suit is brought against one of the railroad companies in my district and they do not want to try it they can take it into the Federal court, and there it must lie indefinitely or the man who brings the suit must compromise it.

Mr. GAINES of West Virginia. Mr. Speaker——

The SPEAKER. Does the gentleman from Alabama yield to the gentleman from West Virginia?

Mr. UNDERWOOD. I do.

Mr. GAINES of West Virginia. I would like to ask the gentleman from Alabama what the line of argument was that the Department of Justice used in determining adversely against the establishment of a court when this condition exists?

Mr. UNDERWOOD. I state that Judge Toulmin has a very small district, with comparatively little work to do. Judge Jones has two large districts and a great deal of work to do. Now, the Department recognized that Judge Jones needed relief, but they said two judges were enough for Alabama; instead of giving another judge, that we ought to have a reapportionment of this business so that the two judges in Alabama could do it; and the Judiciary Committee unanimously reported this bill, and so did the Judiciary Committee of the Senate. It is along the line as advised by the Attorney-General.

The SPEAKER. The time of the gentleman has expired.

Mr. KEIFER. Why is it that the circuit judges can not be relied on to assign a judge?

Mr. UNDERWOOD. Well, they go to other places. They are assigned to other courts. Judge Toulmin often goes to New Orleans and sits as circuit judge.

Mr. KEIFER. Presumedly the circuit judges do their duty in assigning the judges.

Mr. UNDERWOOD. Yes; but they are assigned somewhere else and go somewhere else, but here is where the pressure is; here is where relief is needed. And this is in line with the recommendation of the Attorney-General of the United States.

The SPEAKER. The time has expired. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the Chair was in doubt.

The House divided; and there were—ayes 88, noes 45.

Mr. WILEY of Alabama. Mr. Speaker, I call for the yeas and nays.

The SPEAKER (after counting). Fourteen gentlemen have arisen; not a sufficient number. The yeas and nays are refused. The ayes have it, and the bill is passed.

On motion of Mr. UNDERWOOD, a motion to reconsider the vote by which the bill was passed was laid on the table.

BEEF-TRUST CASES.

Mr. GAINES of West Virginia. Mr. Speaker, I ask unanimous consent to insert in the RECORD the opinion of Judge Humphrey in the case of the United States *v.* Armour & Co. and others, and the oral argument of the Attorney-General in that case, and the statutes upon which the opinion was rendered.

Mr. WILLIAMS. Reserving the right to object, what is the decision the gentleman wants to insert in the RECORD?

Mr. GAINES of West Virginia. I will state, Mr. Speaker, to the gentleman from Mississippi that the purpose of making this request, or the reason for making this request is——

Mr. WILLIAMS. I am informed that this is the Chicago Packers' case. I have no objection.

The SPEAKER. Is there objection? [After a pause.] The Chair hears none.

The opinion and other papers are as follows:

Oral argument of the Attorney-General in the district court of the United States for the northern district of Illinois. The United States *v.* Armour & Co. et al., before Judge Humphrey and a jury.

Mr. MOODY. May it please your honor, I may as well, perhaps, now, as at any time in the course of my argument, address myself to the question which my learned friend has this moment been discussing—the question whether under this immunity act immunity can be conferred upon a corporation as well as an individual.

I shall say little upon that question, because I care less. The Government of the United States, your honor, is too much in earnest in this prosecution to be diverted to the pursuit of a nerveless, senseless, soulless creation of the law. If wrong has been committed, we are seeking the punishment of the men who committed the wrong—the living, breathing human beings. The Government of the United States, and the people of the United States, will be satisfied with no less than that. (Hale *v.* Henkel, 200 U. S., —.)

In the Hale case, last Monday, the Supreme Court decided two questions: First, that a corporation, which could not testify, or, as a witness, produce papers, is not within the terms of the immunity act of 1903, which, in the words of the court, is in almost the exact language of the immunity act now before your honor for interpretation; and second, that a corporation engaged in interstate commerce is not entitled to withhold its books and papers from the scrutiny of the properly authorized officers of the Federal Government; and that the fifth amendment of the Constitution does not grant to such a corporation the right which an individual would have to withhold the same evidence upon the ground that it might tend to incriminate him. Those two propositions distinctly held by that court are conclusive of the contention which my friend has just now submitted to you.

I trust, your honor, that by no one will my presence here be misconstrued. I sincerely trust it may not be taken to show a belief on my part that those who have safeguarded the interests of the Government heretofore need reenforcement, far less a belief on my part that if reenforcement were needed I could bring it. I realize full well the learning, the skill, the ingenuity which the distinguished gentlemen who are representing these defendants have brought to the trial of this cause, but I think I say no more than is his due when I say that the representative of the United States, the district attorney, in his powerful and conclusive argument of last week has shown his capacity to meet them upon equal terms, and when I say that I say what is a compliment to any man. He has done his work well, and let him not forget that the people of this country who are looking to your honor and to this court room, as they have never looked to a court room before in the history of the Government, have realized the manner in which he has performed his duty, and if he has no other reward in this case, he has the reward of the approval of his own conscience and the commendation of all his countrymen.

I need not apologize, I think, to your honor for my appearance at the bar of this court, unusual and almost unprecedented as it is. The law gives me the right to appear, and after great deliberation I believed it to be my duty to appear. The justification for my appearance is found not only in the importance of this case alike to the defendants and to the Government, but in the effect which the sustaining of the defendants' contention would have upon much of the important litigation of the United States. If immunity be conferred upon these defendants upon the ground on which it is here claimed, it would overthrow the executive interpretation of the Cullom Act (act to regulate commerce, approved February 4, 1887, 24 Stat., 379; 1 Supp. R. S., 529), acquiesced in by all for nearly twenty years, and fatally cripple the Government in its attempt to enforce the laws of the land. I realize quite well that the executive department of this Government can not interpret the laws for the court; the judges of the courts are and ought to be independent of the executive officers of this Government. But it is no light thing to overthrow a contemporaneous and long-continued construction of an act by those whose duty it is to administer it, and courts, realizing the gravity of doing that, have always regarded with respect a long-continued and contemporaneous executive interpretation of an act. During the nearly twenty years in which the Cullom Act has been upon the statute book, that no immunity could be conferred upon anyone except upon him who gave sworn testimony or sworn evidence has not been doubted by any of the law officers of the Government, by any of the Attorneys-General—and there have been many names in that time with which I may well shrink from bringing my own into comparison—that has not been doubted by any member of the Interstate Commerce Commission, and upon the roll of that body has been found the names of many distinguished lawyers—none more distinguished, none so distinguished, as the name of Judge Cooley, who was its first Chairman.

No member of the Interstate Commerce Commission has ever doubted for one moment, from the enactment of that law until this day, that immunity was conferred only upon the witness who under oath gave testimony or produced evidence. The Cullom Act itself, your honor, in a section to which I shall refer more at large later in my argument, created a long list of offenses punishable by fine and imprisonment—offenses which may be generally described as discriminations between persons or between localities. The Cullom Act also provided that it should be the duty of the Interstate Commerce Commission to require, not upon oath, but to require information from common carriers that would be vitally material in every one of the prosecutions which might be undertaken under the act, and the common carriers, whether cor-

porations or persons, have complied from the beginning with that requirement of the Commission. If the contention of our friends is true, Congress was guilty of the absurdity of enacting in one section of a law a provision creating and punishing crimes, and enacting in another section of the same law a provision requiring statements from those who would commit the crimes which would necessarily give them immunity. Congress never contemplated such absurdity as that.

Let me illustrate, if your honor please, for I speak under a deep sense of personal and official responsibility for these prosecutions all over the country—let me illustrate my meaning by a case now pending before the grand jury in the southern district of New York. Not long ago the enterprise of the proprietor of one of the New York papers discovered much information which tended to show that all the great trunk lines running out of New York City had been practicing discrimination in the form of rebates to the American Sugar Refining Company. With what I believe was rare self-denial and a high sense of public duty that evidence was offered to the Department of Justice. Out of it charges have grown against the railroads and against the sugar company, and they are now under consideration by the grand jury. I express no opinion whether the charges are true or false; there are ways of deciding that question when the time shall come. These rebates, amounting in the aggregate to hundreds of thousands of dollars, have been often given to the sugar company to aid it in its fight with the farmers who are conducting the struggling industry of producing sugar from beets. When the sugar company wanted to overcome the competition of the farmer, wanted to lay such stress upon him that he would give up the contest in despair and dispose of his property to the monopoly, it went to the railroads and borrowed a club by which it clubbed the farmer to death. And if my friend's contention is true, the men managing those railroads, who helped the sugar trust in its fight with the farmers, by reason of the fact that they made their returns in obedience to the requirements of the Interstate Commerce Commission, showing their tariffs, showing their lawful and published rates, are immune from prosecution.

Those are the considerations which have led me here to-day to implore your honor to weigh this question well; that following that epoch-making decision of the Supreme Court only a week ago, you will not mutilate and destroy the weapon which that decision has put into the hands of the people.

Somewhat more than a year ago the Supreme Court decided the case of Swift *v.* United States (196 U. S., 375), which, as your honor well remembers, was a petition under the Sherman Act against, in the main, the same individuals and these same corporations for an injunction against the continuance of what the Government claimed to be a combination under the Sherman Act. Once that case had been decided, there came pouring into the Government at Washington, to the Bureau of Corporations, and above all to the Department of Justice, complaints from all parts of the land that the injunction was not being observed and that the offense set forth in that bill continued. It seemed to me proper that those complaints should be laid before the representatives of the people, sitting in the grand inquest, for this district of the United States, and they were so submitted, and a long and a careful, and I hope and trust a fair, investigation was made by that body. In the meantime Mr. Garfield had begun and almost completed his investigations of the concerns of these defendants, these corporations. That investigation apparently was for a period ending on July 1, 1904. Although the investigation itself lasted longer than that date, the scrutiny of Mr. Garfield and his subordinates was directed, apparently, solely upon the period ending July 1, 1904.

In the meantime, this indictment on the 1st day of July, 1905, was returned into this court. It is not of primary importance; it is not conclusive of this case, but it has the same significance that the twenty years' absence of a claim of this kind has had in all the other cases prosecuted throughout the United States—that these defendants then made no suggestion of immunity. They had been advised at every stage of this proceeding by counsel as able as the land could afford; they knew the facts and were advised of their counsels' views of the law. When the suggestions against this prosecution, numerous and entirely legitimate, came to the Department of Justice from any quarter, the thought of immunity was absent from them. When your honor was requested by the defendants' counsel to instruct the grand jury at the beginning of their deliberations, not a word was said about immunity. When the grand jury returned the indictment, pleas to the organization of that body and to the jurisdiction of the court were filed and overruled; demurrers to the indictment later were disposed of in this court. The claim that the Government by earlier proceedings on the civil side of the court had conclusively elected to pursue the civil to the exclusion of the criminal remedy, was advanced, and apparently has been abandoned. It is said by my friends that this plea of immunity which was filed some four months after the indictment was returned into court was filed as early as it could be filed; that they wished, first, to exhaust their dilatory pleas before they interposed their plea in bar to this prosecution. I do not know but what that is the true rule of law, but when upon the very day of the indictment they moved to dismiss McRoberts, and secured his dismissal in this court, they then knew the place and the time where immunity should be claimed.

Mr. ROSENTHAL. That is not the fact. It was the first day of this trial.

Mr. MOODY. The first day of the present trial?

Mr. ROSENTHAL. Yes.

Mr. MOODY. Then that argument, of course, disappears entirely. I understood it to be the other way. The fact is that these defendants appear to have a strange aversion to the hearing of any evidence upon the question of their guilt. Whenever Garfield, in his investigation, came near a tender spot—the National Packing Company, for instance—he was led away. Whenever he got "warm," as we used to say in childhood days, he was taken to another part of the room. And when we filed our petition under the Sherman Act the only answer they had to it was to admit by demurrer the facts stated in the petition, facts which after twenty days' deliberation the Supreme Court of the United States, without a dissenting voice, pronounced to be a violation of the law of the land. The defendants have pleaded that they are not guilty of this indictment. They do not say here that they are not guilty, but they say that, whether they are guilty or not, each of them, each of the twenty-two corporations and individuals, has received a pardon.

The Garfield investigation and report, which they joyfully welcomed with open arms, seized upon as persuasive evidence that the profit which they had made in the conduct of their business indicated that they were rather engaged in the business through philanthropic motives than for purposes of gain, and circulated as a fit rebuke to those who had charged them with any wrongdoing—that report, they say, the result of that investigation, was not only a tract for the conversion of the unregenerate people, but a fountain of saving grace in which every one of them who bathed might be washed free of his sins. If that be the law we must submit to it. It is claimed for each one of these defendants, separately, that the effect of that investigation was to give him a pardon, and upon each one, separately, rests the burden of proof. They can not claim their immunity comes to them as a class. They can not dump all this evidence before your honor and all the names of these defendants into the same basket and say that out of that mixture comes immunity for everyone. Sometimes as I have listened to the arguments of my friends on the other side it would seem as if they thought that if anyone had testified about anything relating to an offense committed by anybody that everybody was immune. Now, each one of these defendants must claim and show that under the act of 1893 immunity came to him separately, for the reason that he, in the Garfield investigation, was compelled to furnish evidence against himself, and that therefore he is entitled to the benefits of the immunity act, which supplants the Constitution, which otherwise would have protected him from the disclosure of such evidence.

Of course your honor will quite understand that my contention will be that there is that absence of legal process here which brings all these defendants upon the same plane, but, for the moment adopting without conceding the claim of my friends upon the other side, these cases, although they are tried together, raise separate issues, and upon the trial one of the defendants may be immune; another may not be immune. Each one must show that he was compelled by Mr. Garfield to give evidence against himself with regard to the offense charged against him in this indictment. The Hale case, your honor, shows clearly what the burden is upon each one of these defendants separately. It is not true, as one of my learned friends said this afternoon, that the Supreme Court decided that Hale was entitled to immunity. The Supreme Court decided that Hale could not refuse to answer, because, if his answers related to any offense charged against him he would have immunity from prosecution for that offense. Let me read a word or two from the opinion of the court. The court was then, at this point, considering the contention that this statute was not a sufficient safeguard to Hale, because there was no way in which he could distinctly prove the character of the testimony which he had been compelled to give, and therefore it would be difficult and impracticable for him to obtain the immunity which the act of 1903 afforded him. With regard to that the court said this:

"The suggestion that a person who has testified compulsorily before a grand jury may not be able, if subsequently indicted for some matter concerning which he testified, to procure the evidence necessary to maintain his plea is more fanciful than real"—not more fanciful than real, because it is not necessary for him to procure such evidence but for the reasons which the court goes on to state: "He would have not only his own oath in support of the immunity, but the notes often, though not always, taken of the testimony before the grand jury, as well as the testimony of the prosecuting officer and of every member of the jury present. It is scarcely possible that all of them would have forgotten the general nature of his incriminating testimony or that any serious conflict would arise therefrom."

I quote this, not for the purpose of dwelling on the word "incriminatory," as your honor will see later in my argument. I quote this for the purpose of showing that in each individual one of these cases it must be proved by that defendant that he himself gave some testimony or produced some evidence which related to some offense charged against him.

I may as well stop a moment right here and discuss that question, because it has been recently discussed. We have been so unfortunate—I will not say unfortunate—we have not been clear enough to make our position in that respect understood by the other side. I have no doubt whatever that the fault is ours. I understand that the privilege of the witness and the immunity of the witness is personal to himself. He is protected from producing any evidence or giving any testimony which might incriminate him. He can take advantage of the privilege of no other person, whether that privilege be of an individual or a corporation. It is not a question of whose property the incriminating evidence may be, if it is evidence consisting of books or papers or documents. For instance, I have in my possession the diary of my friend Morrison. I have stolen it from him, if you please; it does not belong to me at all. It contains entries which incriminate him. I am summoned before a grand jury to produce that. I am bound to give it up. I can not plead his privilege. A telegraph operator is brought before your honor as a witness. He has a copy of a telegram which I wrote and sent and it incriminates me. He can not decline to produce it before the grand jury on account of any privilege that I might have. Again, I have the diary of my friend Morrison. It contains in it an entry, verified, perhaps, by my initials, criminating me. All the powers of the Government can not take it from my possession, because it is my personal right under the Constitution not to be compelled to give evidence against myself.

Mr. MILLER. They could compel you to give it up if they didn't put you under oath, couldn't they?

Mr. MOODY. Compel me to give it up?

Mr. MILLER. Yes; if they didn't put you under oath.

Mr. MOODY. Of course they can't, because I wouldn't give it up. I don't require a constitution or an immunity statute if I have got it; I hold on to it until I am brought by process of law into court, and then I no longer rely upon myself. I rely upon the protection of the Constitution, and I have a right to rely upon the protection of the Constitution.

Mr. MILLER. Before you have been put under oath?

Mr. MOODY. No; when I become a witness. That is clear, and will appear by and by, and I didn't think that was disputed in this case. Now, apply that to some of the evidence in this case—or, rather, I withdraw the word "apply." I will not attempt to apply it to the evidence in this case, because I do not accurately know the evidence in this case. But I will illustrate by the evidence in this case for the purpose of making the rule apply as I understand it, and we will suppose for clearness of the illustration that the investigation is before a grand jury. If Mr. Armour, or Mr. Morris, or any one of these defendants were subpœnaed to appear before that grand jury and to produce those books, the answer they probably would make, the answer that they ought to make, is that they were not in their possession. But we will assume that they were in their possession; we will assume that the witness had in his custody and control all the books. He could not withhold those books, or if he produced them he could not obtain the immunity which supplants the right to withhold them unless the books which he brought in contained evidence which criminated him, or, to be more accurate, which contained evidence relating to some offense with which he might be charged. It is not important that the books tended to show that some one else was guilty or tended to show that the corporation had committed an offense. It is essential

that the books should show that the witness had committed some offense, or, rather, to be accurate again, should contain evidence relating to an offense with which the witness might be charged, and if the witness under oath——

The COURT. To your last statement there is no dispute between you and counsel.

Mr. HYNES. No.

Mr. MOODY. No; there is no dispute; I shall make that clear later on. I will say in passing that I do not concede for one moment that the direction of the president or of a director of a corporation to the subordinate, accountant, or chief of accountants, the man who has the custody and control of the books, to allow them to be inspected by the Government officer who has the right to inspect them, is a production of evidence within the ordinary sense in which language can be used. Moreover, each one of these defendants, separately, must show to your honor that he has been compelled to testify or produce evidence relating to the offense charged in this indictment and in every count of this indictment. I do not know that there would be any distinction at all, either the one way or the other about that, between the counts; but every one of the counts of that indictment must be treated as if it were a separate indictment. Moreover, I understand it to be the truth, and your honor will of course correct me if it is not so, that this investigation, as appears by the report, was for a period ending on July 1, 1904, a year before the finding of this indictment. The investigation itself continued much longer than that period, but the period investigated, according to all reports of the evidence and according to the fair interpretation of this report, ended July 1, 1904. Now, this indictment, and every count of it, could be sustained by proof of a conspiracy formed later than that period. The allegation in the indictment, it is true, is that a conspiracy was formed upon the first day of the first boundary line of the statute of limitations, three years before.

The COURT. But, General Moody, hasn't the Government the right to prove any fact occurring during the period covered by the statute?

Mr. MOODY. I don't know; that question would arise later.

The COURT. I say, as the Government would have that right, if any such fact was furnished by the witness, by the parties pleading here, wouldn't that fact be of and concerning a matter covered by the indictment, if it were such a fact as the Government would have the right to prove on the trial? And of course the Government would have the right to prove any fact for any date three years prior to the time fixed in the indictment.

Mr. MOODY. It is possible your honor is right. My only suggestion was that this bar must be a complete bar to the indictment, and a complete bar to every one of the counts, but it is a matter that is so collateral I will not stop to insist upon it. I think it is very likely you may be right in that statement, and that I may be wrong in my illustration.

Mr. MILLER. The plea avers that this investigation that was made was concerning the matters alleged in the indictment. The replication does not take any issue with that fact, but only with the matter of the compulsory character, or the later averments of the plea. The evidence shows the investigation did not end until after the grand jury was in session.

Mr. MOODY. I quite agree that that is so, and have said so several times. I have spoken as I have concerning the evidence in the case, and expressed my views as to its applicability and as to the rules which should govern your honor in the determination of every question arising under it, solely for the purpose of saying that the difficulty and the complexity of the inquiry which must be made under such rules at once challenges attention to the question whether Congress ever intended that immunity could be obtained in this way and that it could depend upon the oral testimony and the fallible recollection of human witnesses.

I have not discussed the facts of this case, both because I have not the capacity to discuss them from lack of understanding them, and from the further fact that in each one of these separate cases, in which each one of these defendants claims his immunity, there is a common factor; there is a total absence of the subpœna, of the oath, or any vestige of the compulsory process of the law. I regard this absence, which is undisputed, as decisive of the case as a matter of law, and I shall submit the reasons for that belief.

When the common law, or any court sitting under the common law, is engaged in an inquiry as to the truth of a fact, it does not, as do the courts under the rules of other systems of law, proceed solely by the rules of free logic. We have the great exclusionary rules. If anyone of us as a private citizen should inquire whether a given fact were true or not, it would be of great importance to us that an honest man told us that another man whom we believed to be honest had said that the thing was true or false. The law, the English common law, the American common law, the law of this land, excludes us from the use of testimony of that kind. So, if outside the court room we wish to know whether any person has committed a given offense, whether one of our own children has been guilty of any crime, we should go and ask him; we should expect him to answer. But the law, for wise reasons, which it is not necessary for us to consider in this case, excludes that, shuts up that avenue to the truth, and we have the exclusionary rule, not expressed as a rule of law, but crystallized into the Constitution. It says: "Nor shall any person be compelled in any criminal case to be a witness against himself."

I do not much believe in reading text-books or in reading cases in an oral argument, but in one or two instances I propose to depart from my usual practice. I propose to read from Wigmore. Any stranger coming in here and not knowing much about this case would think that the real persons on trial were Garfield and Wigmore, with Morrison under strong suspicion; but your honor has been a prosecuting officer, as we all have in our time, and you know that it is the universal testimony of all the counsel who defend people accused of crime that the only really guilty persons are those who are seeking to enforce the law.

Mr. HYNES. You don't include Garfield in that description?

Mr. MOODY. In what description?

Mr. HYNES. Those who are prosecuting.

Mr. MOODY. No; I don't. You did, but I don't. I know your honor is familiar with this treatise, but we should get into the spirit of the privilege before we attempt to construe it, and for my own sake I should like to reread this page. It is contained in one of the sections quoted with approval by the Supreme Court last week, cited in the McAllister case, as stating the history of the origin of the constitutional privilege and its limitations, and it is for the purpose of showing some of its limitations that I read this extract:

"In preserving the privilege, however," says this learned author, "we must resolve not to give it more than its due significance. We are to respect it rationally for its merits, not worship it blindly as a fetish. We are not merely to emphasize its benefits, but also to concede its shortcomings and guard against its abuses. Indirectly and ultimately it works for good—for the good of the innocent accused and of the community at large. But directly and concretely it works for ill—for the protection of the guilty and the consequent derangement of civic order. The current judicial habit is to ignore its latter aspect, and to laud it undiscriminatingly with false cant. A stranger from another legal sphere might imagine, in the perusal of our precedents, that the guilty criminal was the fond object of the court's doting tenderness, guiding him at every step in the path of unrectitude, and lifting up his feet lest he fall into pits digged for him by justice and by his own offenses.

"The judicial practice, now too common, of treating with warm and fostering respect every appeal to this privilege, and of amiably feigning each guilty invocator to be an unsullied victim hounded by the persecutions of a tyrant, is a mark of traditional sentimentality. It involves a confusion between the abstract privilege—which is indeed a bulwark of justice—and the individual entitled to it, who may be a monster of crime. There is no reason why judges should lend themselves to confirming the insidious impression that crime in itself is worthy of protection. The privilege can not be enforced without protecting crime; but that is a necessary evil, inseparable from it, and not a reason for its existence. We should regret the evil, not magnify it by approval. No honest and intelligent accused (in the language of the Commissioners above quoted) has anything to fear from a criminal prosecution fairly conducted. To every such person the appeal to the privilege is a repugnant and humiliating expedient. The spirit of every manly nature, unfortunate enough to be unjustly accused, must always be that of the brave and bluff Mr. George, who, when falsely charged with murder and urged by his friends to seek the services of a lawyer, stanchly refused:

"'Say I am innocent and I get a lawyer; what would he do, whether or not? Act as if I was guilty—shut my mouth up, tell me not to commit myself, keep circumstances back, chop the evidence small, quibble, and get me off perhaps. But, Miss Summerson, do I care for getting off in that way? * * * I don't intend to say,' looking round upon us, with his powerful arms akimbo and his dark eyebrows raised, 'that I am more partial to being hanged than another man. What I say is, I must come off clear and full, or not at all. Therefore, when I hear stated against me what is true, I say it's true; and when they tell me, "Whatever you say will be used," I tell them I don't mind that—I mean it to be used. If they can't make me innocent out of the whole truth, they are not likely to do it out of anything less or anything else.'"

That closes the quotation, and the author goes on to say:

"There ought to be an end of judicial cant toward crime. We have already too much of what a wit has called 'justice tampered with mercy.' A due respect for the privilege is perfectly consistent with a strict contempt for the guilty offender, and does not require or condone his protection as an end good in itself or good under any circumstances. It is enough for justice and for the Commonwealth that the privilege exists, immovably fixed in the Constitution. The good which it aims at consists in that general fact and system, and not in the individual application of it to a given claimant. That effects mostly harm—a particular harm which we suffer for the larger good.

"The privilege therefore should be kept within limits the strictest possible. So much of it lies in the interpretation that its scope will be greatly affected by the spirit in which that interpretation is approached."

Approaching, then, the interpretation of the constitutional privilege in that spirit, in the spirit of the language just read, and a week ago approved by the Supreme Court as stating the proper limitations of the privilege, approaching it without either attempting to exaggerate its benefits or diminish them, let us see what the privilege is. Surely we have abundant material from which we can ascertain with accuracy what the constitutional privilege of the witness was, because the common law, the Constitution of the United States, and the constitutions of all of the forty-five States of the Union are all the same. Expressed in slightly differing words, they all mean the same thing, and they all mean just what the fifth amendment to the Constitution of the United States says, "No person shall be compelled in any criminal case to be a witness against himself." The privilege of the citizen is that he shall not be compelled to be a witness against himself, not that he shall not be induced or persuaded to be a witness against himself, not that he shall not even be deceived or defrauded into being a witness against himself, but that he shall not be "compelled" to be a witness against himself. This constitutional safeguard is not the privilege of the citizen until he becomes a witness. It is the privilege of the citizen when he becomes a witness, and when he becomes a witness, wherever he may be, whether in an open court, whether in the secrecy of the grand jury room, whether before a committee of the legislature or before any other official authorized to administer an oath, the privilege attaches to him there. To violate this privilege is to compel the person who appeals to it to be a witness against himself. "The interdiction of the fifth amendment," said the Supreme Court last Monday, "operates only where a witness is asked to incriminate himself—in other words, to give testimony which may possibly expose him to a criminal charge"—where a witness is asked to give testimony which may possibly expose him to a criminal charge. It operates only where a witness is asked to give testimony. Those words are measured. Garfield can not waive those words, although I should not be surprised that an extension of the same doctrine that an administrative officer could waive a statute of the United States might be later found to mean that some one could waive the language of the Supreme Court of the United States. This is expressed again in Wigmore, and it is the last time I shall refer to it; in just a word, on page 3123; just a sentence, and I will limit my quotation. This is speaking of the constitutional privilege, too:

"In other words, it is not merely compulsion that is the kernel of the privilege, in history and in the constitutional definitions, but testimonial compulsion. The one idea is as essential as the other."

Testimonial compulsion. The witness must be compelled; he must be compelled to testify. Again, the quotation I just laid before your honor:

"The interdiction of the fifth amendment operates only where a witness is asked to incriminate himself—in other words, to give testimony which may possibly expose him to a criminal charge." "The general principle, therefore," continues Wigmore, "in regard to the form of the protected disclosure, may be said to be this: The privilege protects a person from any disclosure sought by any legal process against him as a witness."

The Supreme Court and the distinguished author each measures the words with care. The idea contained in this language of the court, with which I have compared this language of the author, is the same—

that the constitutional privilege is an exemption against compulsion upon the citizen when he becomes a witness. Only then, and at no other time; only there and nowhere else. Accordingly, in the development of that principle the courts have held, with substantial uniformity, that the privilege is the privilege of the witness himself and that it can not be claimed by anyone except himself, neither by the party in whose cause he is testifying or by the counsel for the witness himself; and the courts have further held that in order to avail himself of this privilege he must assert it at the time when the incriminating question is put to him. The Bell case, in which it was held that in that case the claim of exemption need not be made, did not turn upon the constitutional amendment. It was the case of an ignorant negro, born under the shadow of the lash, with his whole mental habit under the domination of the white man in authority, and it was held—excluding it as evidence of an admission; it was held, rather, to withdraw that—that upon an attempt to indict him for falsity in an affidavit thus procured, that affidavit was not admissible in evidence. It may be an extreme case. I don't care whether it is or whether it is not, because the constitutional privilege of a witness must be distinguished from the right of an accused to the exclusion of his own confession which has been obtained from him by improper means.

We do not advance unless we think clearly, unless we put the principles of the law side by side, each apart from the other, and not try to mingle them together. Confessions have been always excluded where they have been obtained through the influence of the hope of favor or the fear of harm, where some one in a position of authority over the accused has held out to him the hope of favor if he would confess or has held over him the fear of harm if he would not confess. The law has said with regard to all such cases, not seeking to measure the amount of the influence, that if the influence in any degree was operative upon the mind of the accused when he made the confession, it was unsafe to admit testimony of the confession against the person upon his trial. Now, I wish to say a word about the Bram case. (Bram *v.* United States, 168 U. S., 532.) I should not be in fashion if I did not say something about the Bram case. In that case the Supreme Court held that the trial court had erroneously admitted a confession obtained from a prisoner while he was under arrest.

There are some superficial differences between the condition of Bram and the condition of Mr. Armour at the Chicago Club. Bram was the navigating officer of the ship in which the murder had been committed. He was the only man aboard the ship who could navigate it. They allowed him to navigate the ship until they got within sight of the harbor of Halifax; then after consultation the crew mustered together, rushed upon him, seized and overpowered him, and put him in irons. He was taken to the presence of the chief of police of Halifax, or the chief of detectives of Halifax, I don't know which. He was stripped of his clothing, and then he was interrogated, told that he was guilty, and, what the court held to be an inducement held out to him, that it would be a benefit to him if he would make a confession. Then he made what the Government regarded as a sufficient confession to urge it in evidence in the court below, and what the Supreme Court regarded as a sufficient confession to be brought within the rules of confession, and the evidence of it was excluded. It has been criticised as an extreme application of the rule. It is not important whether it is extreme or not to me here. The importance of that case here is in the language of the distinguished judge who wrote the opinion of the court, who said upon one page that the confession rule was "controlled" by the fifth amendment, although he went on to exclude the confession under a rule of law in distinction from that of the Constitution, which he cited, and sustained by the citation of cases. He said, further along, that the fifth amendment was a crystallization of the doctrine of confession. It is upon those two observations of that distinguished judge that our friends build up the greater part of their case.

Mr. ROSENTHAL. There is no dissent upon that proposition.

Mr. MOODY. No dissent on that proposition at all?

Mr. MILLER. It has been referred to approvingly in the same court.

Mr. ROSENTHAL. Although there was a dissent in the case by Mr. Justice Brewer, it was not upon that proposition.

Mr. MOODY. The proposition was not involved in the decision; it was an expression of opinion. I think that learned judge would be surprised at the use that is being made of his language in this case and would regret that he ever used language in that way if he thought it could be put to the use to which my friends on the other side have sought to put it to-day. That the fifth amendment is the crystallization of the doctrine of confession in the sense that it grows out of the same purpose I do not deny; but that confessions are excluded by virtue of any right conferred upon the citizen by the fifth amendment I do deny; and I say that there is nothing in the words, I would almost say inadvertently used, in the words of Mr. Justice White which justified the belief that he thought that the right to have a confession improperly obtained excluded did grow out of the fifth amendment, although it was influenced by the fifth amendment. If that case has been followed upon that point or upon that passing suggestion, upon that use of words, hardly rising to the dignity of a dictum, I have not heard a case cited in which the approval has been expressed. I do go back again to the Hale case, because I believe the words of the court in that case were measured with reference to the criticism that has been made upon the Bram case. "The interdiction of the fifth amendment operates only where a witness is asked to incriminate himself—in other words, to give testimony which may possibly expose him to a criminal charge." It operates only upon a witness when he is compelled to give testimony as a witness. I cite the decision of the Supreme Court, not yet ten days old, against a dictum of one of its most distinguished judges, and leave that question here.

Mr. HYNES. Is that sentence read from the opinion or is it interpolated by you?

Mr. MOODY. It is read from the words of the opinion. If Mr. Garfield, of course, by any promise of an immunity that he could not give, by the holding out of hope of immunity, or by exercising the influence of fear upon any one of these defendants, influenced them to make any statements to him, the same rule of law protects every one of these defendants as protected Bram, and when the time of their trial comes, evidence obtained in any such way can not be admitted against them.

Having in view, then, the exact extent of the constitutional privilege, with its exemption from compulsory testimony, let us consider the nature of the substitute by which it is possible to supplant the privilege itself.

Whereupon an adjournment was taken until 10 o'clock Tuesday, March 20, 1906.

MARCH 20, 1906—10 a. m.

Court met pursuant to adjournment.

Mr. MOODY. Your honor, at the adjournment of court yesterday afternoon I had concluded my discussion of the nature and limitations of the privilege conferred by the fifth amendment to the Constitution. I had thought it unnecessary to bring again to your honor's attention the various authorities that were relevant to that discussion, because I conceived that the nature and limitations of that constitutional privilege were clear, even if they were not entirely agreed upon between the opposing counsel in this case. I had concluded that the privilege secured by the fifth amendment to the Constitution is that a person can not be compelled, as a witness, before any tribunal to give incriminating testimony or evidence against himself over his claim of exemption. Let me for a moment analyze that statement. A person can not be compelled as a witness before any tribunal. In order to be entitled to the privilege he must be a witness before some tribunal under the compulsion of the law to give incriminating testimony or evidence against himself. The nature of the question from which he is excused from answering is a question which elicits testimony not only which relates to an offense, but incriminates the person giving the testimony. The compulsion must be exercised over his claim of exemption. I believe that my statement of the law in this regard is an accurate one. Having, then, clearly in view the nature and the exact limitations of the constitutional privilege, let us consider what would be necessary in order to supplant it.

The substitute by which the constitutional privilege may be supplanted must be coextensive with the privilege itself. It need not be more. It must be coextensive with the privilege. It need not be more. If, then, immunity from prosecution on account of the crime concerning which incriminating testimony may be given is enough, as it is adjudicated to be enough, then that immunity need only be given where the witness is compelled to give incriminating testimony against himself over his claim of exemption, under his oath, upon the stand, as a witness, by the compulsory process of the law. If the substitute does that, it is coextensive with the privilege and therefore is sufficient. We all ought to agree, I think, up to that point.

But the immunity, though it can not be narrower than the constitutional privilege, may be broader. The lawmaking body, so only that it furnishes an immunity coextensive with the privilege which is taken away, may give an immunity as much broader than that privilege as it chooses to give. It might give, as my friends here contend that it has given, immunity to everyone who, in any way, should furnish information concerning the offense which may be charged against the person giving the information.

I say it may be broader than the constitutional privilege. Whether it is, in point of fact, in any jurisdiction broader than the constitutional privilege must depend not upon our individual ideas of what would be desirable or equitable, but upon a scrutiny of the terms of the law by which the immunity is conferred.

Tested by that consideration, tested by a fair interpretation of the act creating immunity, it is my belief that the immunity given under that act is broader than the constitutional privilege which it supplants, and broader in two respects, and in two respects only.

The constitutional privilege conferred upon the witness the right to withhold only testimony which tended to criminate himself.

I believe that under this statute the immunity is given where the testimony "relates" to the offense for which immunity is sought, and I think that conclusion fairly follows from the wording of the act itself, because the immunity is given on account of any offense "concerning" which the witness may testify. Congress might in that respect—and still have given the full constitutional privilege and have provided a sufficient substitute for it—it might have said that the immunity should be given for any offense concerning which the witness gave testimony incriminating himself. But the absence of that limitation upon the testimony, that characterization of the testimony, leads my mind irrestibly to the conclusion that in that respect the immunity conferred by this law is broader than the constitutional privilege.

Now, in considering whether testimony is testimony "concerning" the offense, I agree that the same broad rule of relevancy should be adopted which was adopted at the common law or under the constitutional privilege in determining whether incriminating testimony was relevant to the offense. But, if your honor please, there must be some limit to relevancy established. However broad the field of relevancy may be, we must all concede that there must be a limitation to it. That limitation, though not easy to apply to the facts of any given case, is, I believe, easy of statement. It must be testimony which in some way is relevant to the guilty transaction in this case, the alleged conspiracy, the alleged unlawful agreement between the defendants, and anything which is not relevant to that in the broad manner in which I have stated—to that alleged guilty agreement—is not testimony "concerning" the offense.

I think, further, that the statutory immunity is broader than the constitutional privilege in another respect. It is well settled that the privilege arises only in the case that the person entitled to it makes his claim of the privilege upon his oath as a witness upon the stand. The statute might have insisted upon that condition as the condition of immunity, and if it had insisted upon that condition as a condition of immunity it would have still been broad enough to have in that respect, at least, supplanted the constitutional privilege. But here again the statute did not impose any such condition. It was silent. And from the absence of that provision in the act of immunity I conclude, with all due deference to those who may differ from me, that there is no need of a claim of immunity by the witness in order to set it up in bar of any prosecution against him. And in addition, I am somewhat influenced by the authority of the dictum in the Quarles case (13 Ark., 307), and of the decision in the Sharp case (People *v.* Sharp, 107 N. Y., 427), and of what I conceive to be the whole tendency of the opinion in the Hale case. Let me dwell upon those three authorities, or at least upon two of those authorities, for a moment.

The Quarles case, which is an Arkansas case, was this: The defendants were indicted for betting at a game of poker.

The witness was called and was asked if he had seen defendants betting at that time and he declined to answer on account of his privilege, and the constitutional privilege in Arkansas is, I may say in passing, although in different words, in substance the privilege in the Constitution of the United States. The immunity statute in the case was that the testimony which he should give in no instance could be used against him in any prosecution for the same offense. The court ruled that the witness could not be compelled to answer. Now it is very obvious that the ruling of the trial court was in accordance with the law, as finally settled in the Counselman case. From that ruling of the trial court an appeal was taken to the supreme court of that State and that ruling was reversed—the defendants in the meantime having been acquitted and the Government apparently having the right to appeal.

In the course of the discussion of the case, the court said that under this statute, which gave immunity by providing that the testimony should not be used against the witness who had given it upon the stand, it was not necessary for the witness to claim his privilege.

The Sharp case was a decision in accordance with the dictum in the Quarles case. The Sharp case was, as your honor of course recalls, the case of a person who was called as a witness before a legislative body in the State of New York to testify upon the subject of bribery, in which he was concerned. He gave testimony which tended to criminate him. He subsequently was indicted for the bribery concerning which he had testified, and the testimony which he gave before this committee was, over his objection, admitted upon the trial. The statute concerned in that case was substantially like the statute in Arkansas and substantially like the statute condemned in the Counselman case. There was another immunity statute, but it had no relevancy to the decision in this particular case.

The court held that the witness was entitled to the right not to have the testimony which he had given under those conditions used against him on trial, although he had not asserted his claim of privilege at the time he gave it.

In the Sharp case the witness had been subpœnaed; he had been subpœnaed before a tribunal which was a court with all the powers of a court—a tribunal which had a right to hear testimony and had a right to punish for contempt any witness before it.

Mr. MILLER. No.

Mr. MOODY. Yes; and it was so held in the jurisdiction of New York, in a case cited, in the very opinion, in the Sharp case.

Mr. ROSENTHAL. Without reporting back to the Senate?

Mr. MOODY. I did not mean to go so far as that. I mean that the tribunal itself—of which a committee was, in the expression so frequently used in legislative bodies, of which the committee was the eyes and ears—had the power of punishing for contempt. A committee has no legal existence in and of itself. It is—and no better expression can be found than the frequent expression used in legislative bodies—it is the eyes by which the legislative body sees and the ears by which the legislative body hears. And this witness was then before a tribunal, in the sense in which I use the term, which had the power to punish for contempt.

Mr. HYNES. The committee had power to punish?

Mr. MOODY. No. I am not going over that explanation again. My idea, I think, is sufficiently clear.

Mr. HYNES. Power to report, as Garfield had?

Mr. MOODY. Yes; I understand that. In giving the opinion the court points out one or two surrounding circumstances which are of great importance:

"It was conceded," says Mr. Justice Danforth, "that at the time he testified the defendant was before that committee under the operation and compulsion of a subpœna duly issued by the committee, and that the testimony he gave was in response to questions propounded in their behalf."

Again: "It appears by the concession there made and already quoted, that upon objection being made to the introduction of Sharp's testimony, on the ground that his statements before the committee were privileged, made under compulsion of a subpœna and the constraint of an oath duly administered by the committee."

So that we have here a case where the witness was acting under compulsory legal process.

Moreover, although these cases may be distinguished on account of the nature of the immunity provided under the two laws then under consideration, from the nature of the immunity furnished by the act at the bar of this court, still in my judgment the distinction is without legal consequences.

I think the whole tendency of the opinion of the Supreme Court in the Hale case is, that if the witness had actually testified under the constraint of a subpœna and of an oath and actually given testimony which concerned the offense with which he might be charged, that testimony given under those circumstances, without any claim of immunity on his part, would have given him immunity against any prosecution on account of that offense.

Now, therefore, I have stated it to be my opinion that the immunity under the act before your honor is broader than the common-law privilege in the two respects that I have named: First, that the testimony need not be incriminating; it need only be relevant to the offense for which it is set up as a bar. Second, that in order to obtain immunity, if the provisions of the act are otherwise complied with, it is not essential that the witness should assert his privilege.

But it is my contention that in every other respect the privilege and the immunity are coextensive. The conditions of the privilege are made the conditions of the immunity. Subpœna, testify, evidence, produce, perjury, all show it. The use of those words all show it. That the claimant, to have immunity, must be a witness testifying or producing evidence under oath breathes from every pore of this act.

On the other hand, our friends claim that immunity comes under this act from any information, using the word in its broader sense, which may be furnished by the person claiming the immunity to the person officially making the investigation, and that claim is based upon the proposition that immunity is given in such case because the information is furnished under the compulsion of the law. There is no longer any pretense that there was any compulsion in fact exercised by Mr. Garfield, apart from the powers which the law had vested in him. If it were dealt with as a question of actual compulsion by what happened between the parties as they met, it would not come within gunshot of the most extreme case under which confessions have been excluded, and they are excluded where the influence of hope or of fear is of the slightest character. And so the claim is made that the information furnished to a Government officer entitled to have it is information furnished under compulsion of the law, and that by the act of 1893 such information confers immunity upon the person giving it. There is the issue between the parties, stated, I believe, accurately, if your honor please, and stated briefly.

This question is singularly free from authority. I intend to be within bounds when I say that our friends upon the other side have not only furnished no authority in the shape of a decision by any court to sustain their contention, but they have not furnished a single line or word of dictum from any judge or any text writer in existence. I think I am absolutely accurate in making that statement.

On the other hand, we have authority, not of course conclusive, not authority in the sense in which a decision of a court is authority. We have the authority of the executive interpretation of this act, contemporaneous and long continued and acquiesced in up to this time by all interested in its proper interpretation. Moreover, we have one adjudicated case, which I submit to your honor is in principle precisely in point. That is the case of Warner against The State (Warner *v.* State, 81 Tenn., 13 Lea, 52), already before your honor, in the 13th Lea, Tennessee. In that case a person was brought before a grand jury by the subpœna of the attorney-general of the State of Tennessee—or rather, in Tennessee all the county attorneys are called attorneys-general—by the attorney-general for the county of which the grand jury was representative. The attorney-general had no right to issue a subpœna, that right being vested in the grand jury alone. The witness was not sworn, and in that condition declined to answer questions propounded to him by the grand jury, and asserted his right under the Constitution thus to decline. Thus we have the case of a witness under a void subpœna—a person under a void subpœna who had not become a witness by the administration of an oath to him. Under those circumstances the judge of the court in which the grand jury was sitting held the witness for contempt, saying to him in substance that the immunity statute of Tennessee, which provides that "no witness shall be indicted for any offense in relation to which he has testified before the grand jury," took away his right of silence. The witness continued contumacious, and the punishment for contempt was imposed upon him by the trial judge, and he appealed to the supreme court of the State, and that court held that he could not be punished for contempt because the subpœna was absent and its place could not be supplied by a void subpœna; and especially because the oath had not been administered to him, and not testifying under oath he did not become a witness so that he would be entitled to the immunity provided by the law of Tennessee.

Just a few words from the opinion of the court:

"If, as Judge McKinney says, and as all must agree, the term 'witness' must be understood in a legal sense, and can only be applied to one brought before a grand jury by compulsion, a fatal objection to this proceeding is that the witness was not sworn to testify. It is for the failure to testify that he may be committed for contempt, if at all; and he could not testify at all until sworn—until sworn to speak the truth, etc., he was not a witness in any sense subjecting him to punishment for contempt for refusing to answer questions, as one of the essential elements of compulsion. The oath, and the only one the law regards as binding the conscience of a witness, was absent. If Warner had spoken in reply to the questions, ever so falsely, he would not have been guilty of perjury or other offense punishable by law. It necessarily follows that if Warner had answered questions criminating himself and others, he would have done so voluntarily and not as one under compulsion to attend and testify; and if indicted for the offense, as to which he had furnished evidence against others, he could not have successfully pleaded a statutory pardon in bar of the prosecution against him."

Let us pause a moment. The statute of Tennessee is singularly, in all essentials, like the immunity act now before your honor. It is not a statute providing that the testimony of the witness shall not be used. It is a statute providing, as the act of 1893 provides, that if the witness testifies he shall have immunity from prosecution. In every essential respect the two acts are alike. No witness shall be indicted for any offense in relation to which he has testified, says the Tennessee law. No person, the act of 1893 in substance says, shall be prosecuted for any offense concerning which—in relation to which, adopting the same words—in relation to which he has testified. Now, here is a precise decision of the highest tribunal of the State of Tennessee interpreting that statute as requiring the witness to testify under oath before he can obtain the immunity conferred upon him by the law. There, then, are all the authorities upon the precise and vital proposition which is in dispute between the parties. Upon the one side nothing; upon the other side a practice of twenty years and the decision of one of the highest tribunals of the courts of the States.

Mr. MILLER. Would I be interrupting the Attorney-General if I should ask how that executive practice is shown which is appealed to here?

Mr. MOODY. It is stated as other law is stated to the court.

Mr. MILLER. I mean——

Mr. MOODY. It will appear a little more clearly by and by, I think, when I come to a discussion of some of the statutes in the bill.

Mr. MILLER. I mean the executive construction.

Mr. MOODY. Yes; I know what you mean.

Mr. MILLER. The executive construction which prevails is what I mean.

Mr. MOODY. I understand what you mean.

Mr. MILLER. Yes.

Mr. MOODY. This leads me up to a consideration of the legislation itself. I have said that the immunity given by the law depends not upon our idea of what would be desirable and equitable as an immunity, but depends upon the interpretation of the statute law under which the immunity is claimed. Before I discuss the law in detail, I deem it wise and desirable to state my claim with precision to your honor. It is this:

Exactly as by the Constitution a citizen is protected from self-incrimination as a witness under the compulsion of legal process, so under the laws of immunity a citizen is given immunity only when as a witness under the compulsion of legal process he gives testimony or produces written evidence relating to an offense. The law gives immunity that is coextensive, with the exceptions named, with the constitutional privilege; just that and nothing more. And no officer of the Government, from the President down, no jury and no judge of any court, has a right to award immunity in any other case. This, with all the power that I have, I shall maintain before your honor.

I agree with Mr. Rosenthal that it conduces to clearness and accuracy of conclusions first to discuss the immunity as it grows out of the Cullom Act and the amendment or supplement to it contained in the act of 1893, and then proceed later to discuss how, if at all, the conclusions derived from those two acts are affected by the creation of the Bureau of Corporations and the description of its powers which are contained in section 6 of the act creating it.

Section 12 of the Cullom Act may be stated in the first place very generally. It gave to the Interstate Commerce Commission the power to inquire and to obtain information in the broadest sense. The only limit upon that information was that it should be material to the performance of the duties of the Commission. Later the same section gave the power to the Commissioners to require by subpœna, testimony, and documentary evidence. In that connection it provided for the substitution for the constitutional privilege of the statutory immunity, and that statutory immunity was that the testimony or evidence given by the witness should not be used against him in any subsequent prosecution.

Then came the Counselman case (Counselman *v.* Hitchcock, 142 U. S., 547), in which a like provision contained in section 860 of the Revised Statutes was declared to be insufficient as a substitute for the constitutional privilege. It was declared to be insufficient upon grounds that may be as clearly indicated by an illustration as by anything else. You best illustrate from the simpler case generally. Suppose there were a general statute of immunity, as I have no doubt as time goes on there will be, and a witness was called before a grand jury and asked if he had taken part in a burglary. He said: "Yes; I took part in the breaking into that house in the nighttime. I had two confederates

with me—Jones and Brown. We took the plunder away and the next morning I disposed of a part of it at a pawnbroker's on such a street, and I carried the rest of it out into the country and buried it. When I was there a little girl on her way to school spoke to me and I talked with her." Obviously it would be no protection to that witness to say that that testimony should not be used against him upon a prosecution for the offense of burglary, because through that testimony it would be very simple to trace the three housebreakers, in company together, just prior to the breaking; it would be very simple to identify the defendant by the testimony of the pawnbroker; it would be very simple to identify him by the testimony of the little girl on her way to school, and therefore the court has wisely decided that the immunity which simply made the testimony useless did not protect the citizen to the extent that the privilege of silence given by the fifth amendment to the Constitution protected him.

So the act of 1893 was passed—I don't care whether you call it an amendment or a supplement. In a broad way it was intended to take the place of that part of the Cullom Act which had been declared unconstitutional by the Supreme Court. That act, instead of providing that the testimony should be useless against a person giving it, provided that if the person gave testimony under the conditions named he should be absolutely immune from any prosecution on account of the offense concerning which he had testified. That statute came before the Supreme Court in the case of Brown *v.* Walker (161 U. S., 591), and was sustained by a majority of the court and is now the law of the land. It follows therefore that if immunity is given in strict accordance with the law an equivalent to the privilege is afforded.

Coming now to a closer analysis of those two laws taken together, I venture to submit to your honor that this is not a case for the application of a strict rule of interpretation or the application of a liberal rule of interpretation. It is simply a case where the act should be interpreted according to its plain meaning. Seeking, then, to interpret the act in that way, I now return to section 12. I confess my indebtedness to my Brother Rosenthal for his most admirable analyses of this act—of these acts. Of course I do not agree with the conclusion, but I agree in the main with the analyses that he proposed to your honor. In the first place, under section 12, the Commission is given authority to inquire into the management of the business of all common carriers and the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the object for which it was created. That is the power to inquire and to obtain information in its broadest sense. No limit to the word "information." No limit is put upon the information by the act.

The COURT. And no specific mode of procedure?

Mr. MOODY. And no specific mode of procedure. It is open to the Commission to obtain that information in any manner which it chooses to use. There are, however, two specific ways in which knowledge can come to the Commission by following out the pathway laid out by the statute, and those I shall now refer to.

The first of those ways is to acquire knowledge through this power which is given to the Commission. "The Commission shall have the power to require, by subpœna, the attendance and testimony of witnesses and the production of * * * documents."

The COURT. Is it your idea that the law contemplates that the Commission shall begin by subpœnaing?

Mr. MOODY. I think it is entirely in the hands of the Commission.

The COURT. Very well.

Mr. MOODY. I think it is entirely in the hands of the Commission as to whether they shall begin by subpœna or not.

The COURT. Very well.

Mr. MOODY. This power to acquire knowledge is a power "to require by subpœna" the testimony and the evidence of witnesses.

It is further provided that in case of contumacy, which of course can refer only to the conduct of a person who is a witness or of refusal to obey a subpœna, the aid of a court may be invoked. And it is further provided, as a part of the same provision which authorized the Commission to obtain information through the requirement of a subpœna for the attendance, testimony, and evidence, a substitute for the constitutional exemption of the witness from incriminating himself. The law takes away the excuse that the testimony might incriminate the witness, and furnishes him the immunity provided, first in the act itself and later in the act of 1893. And I beg to call your honor's attention to the fact that that immunity is given in connection—and that is all that I say here now—that the immunity is given in connection with the testimony and the evidence that follows, which comes to the Commission from its power to require by a subpœna testimony and evidence, and that this deprivation of the constitutional privilege and substitution of the statutory immunity is not in any way connected with any other part of the act. And the claim is taken away—the claim of privilege is taken away and the immunity is conferred in its place, not for "information" which the witness may have furnished, but for "testimony" or "evidence" which he may have furnished.

Mr. MILLER. Might I ask the Attorney-General whether he means by evidence anything more than the production of the books, tariffs, papers, contracts, agreements, and documents referred to in the act?

Mr. MOODY. Yes.

Mr. MILLER. Something——

Mr. MOODY. I do, yes; and I shall make that plain.

Mr. MILLER. Not the concrete thing?

Mr. MOODY. I simply desire to say here—perhaps it is not necessary—that when I use the word "evidence" I give to it the same meaning that I give to the word "testimony"—that it is the evidence and the testimony of a sworn witness——

The COURT. Well, now, going to the liability of the defendant to answer, is there any duty upon him to answer before he is subpœnaed?

Mr. MOODY. None whatever until there comes a duty, which I shall allude to, imposed upon him by the twentieth section, which has not yet been brought before your honor, but there is no duty——

The COURT. What do you make of the words "legal requirements?"

Mr. MOODY. I am going to argue that very fully to your honor, if you will permit me.

The COURT. Very well; take your own course.

Mr. MOODY. And I think, if your honor please, I venture to predict that I shall leave no doubt in your honor's mind, or in the mind of any fair-minded person, as to what Congress meant when it used the words "lawful requirements." I think I can predict that with safety.

Now, to show a little more clearly that the evidence which is referred to at the very threshhold of the provision for immunity means not merely books and papers and documents, but books and papers and documents that have been produced by a witness, verified by a witness, who seeks by that means to obtain his immunity under the law, I ask your honor's attention to a provision contained a little later in this section of the act referring to testimony taken by deposition. There is a provision in the next clause to that of immunity by which it is prescribed that the testimony of any witness may be taken by deposition. There follows that provision a prescription of the methods which must be taken by the Commission in order to obtain the deposition of the witness, and it concludes with this significant language: "Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission." The use of the word "witnesses" illustrates what the author of this act had in mind upon the preceding page when he said that the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of books and papers and agreements and documents. It is a declaration by the author of the act that he meant the production of books, papers, and documents by a witness.

Let me, for the purpose of making my argument clear, undertake to make Congress a person for the moment. I say to Congress: "When you said that the Commission should have the power of requiring by subpœna the attendance and testimony of witnesses and the production of documents and papers, did you mean that language to be understood as saying that these documents should be produced as evidence by a witness?" "Yes," says Congress. "Well," I reply, "so it seems to me. But my brother Miller, one of the most distinguished lawyers of the West, says you did not mean that; says you meant by the production of all books, papers, tariffs, and contracts only that they should be brought into court. Now, I have got to meet it. How shall I answer?" Congress says: "Well, I meant to use that language in the sense of evidence given by a witness, and I think it ought so to be construed in and of and by itself." "But," reflecting a moment, Congress says to me: "I not only meant it, but I said that I meant it upon the very next page of this law, because when I undertook to describe the effect of that language I said, in speaking of the production of evidence by a deposition, that it might be compelled 'in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinbefore provided." "That," says Congress, "is a distinct affirmation, not only in the same law, but in the same section and upon the next page, that when I spoke about the production of books and papers and tariffs and contracts I meant the production of these papers and documents by a witness." And it closes debate upon that proposition.

So I say that the first proposition which I make to your honor is this, that as you enter upon the threshold of the door that opens into immunity you find the provision that the Commission shall have power to require, by subpœna, the testimony and evidence given or produced by a witness.

Mr. MILLER. Now, might I ask whether if a person subpœnaed to produce his books comes in with his books under his arm and passes them over to the tribunal, is any evidence necessary, any testimony by him or anybody else necessary, as against him, that those are his books; and when they are produced, the record showing that the defendant or persons charged produced them as his books, don't they become the very evidence that that or any other law provides for as against that person, without his oath? Don't they become evidence within the law?

Mr. MOODY. No; it is because you are keeping your mind off the real question in this case—purposely and intentionally. My friends have argued all around this case. Our claim is that the statute has provided an immunity coextensive, and more than coextensive, with the constitutional privilege and exactly coextensive in the respect that the immunity grows out of the testimony, the evidence spoken or produced under the oath provided for by the law. And it is not of any importance whether or not between parties who are not concerned at all primarily with pardon, it is necessary to verify evidence and verify documents that are produced and offered in open court.

The COURT. Now, without seeking to disturb the course of your argument, and you may answer now or later as may be more convenient to your programme, if you concede that the Commission in carrying out the provisions of this act may begin with a private inquiry not based upon any subpœna, is there any duty upon the citizen to answer the inquiry until the subpœna comes?

Mr. MOODY. None whatever.

The COURT. Then what goes of the concession you have already made, that there is no duty upon the citizen to claim his immunity under the act?

Mr. MOODY. I confess I do not——

The COURT. I believe you stated that.

Mr. MOODY. Yes; I have stated——

The COURT. The immunity flows from the law, that in order to get it you must demand a subpœna, and is not the effect of that to claim immunity?

Mr. MOODY. Oh, yes; yes. I am very much gratified that your honor suggested that thought to me, because I think it suggests why we all have been a little troubled about the necessity of the claim on the part of the person who is seeking immunity, that he shall have his immunity. Proceeding upon the defendants' view, that immunity can be conferred by the giving of information, in the broadest terms, of course a proper condition to conferring immunity upon such considerations would be that the person who seeks it should claim it, and in some way indicate to the governmental officer that he refused, or desired not to be interrogated upon this subject; so that he might, by that refusal, indicate to the governmental officer that he was unwilling to proceed, and that he must be compelled to proceed in order to have a substitute for the compulsion of legal process. So that I agree that if you are going into an immunity as broad as our friends upon the other side claim, then, as your honor has suggested, it might well be that the person claiming the immunity should make the claim of his privilege, the claim of his right under the law, so that there might be something to indicate that there was compulsion exerted, that there was an unwillingness to be overcome.

Mr. HYNES. Has he any privilege to claim?

Mr. MOODY. I think he has not, because I absolutely and utterly repudiate the theory upon which these defendants are trying this case and upon which they claim immunity. I say that they obtain immunity only in the case that is described and carefully limited by the law itself.

The COURT. Do you think Congress contemplated giving the officers power to make an inquiry which the citizen was not liable to answer?

Mr. MOODY. Oh, yes. I think there is no doubt about that. Suppose the jurisdiction were either in the Interstate Commission or in the Bureau of Corporations, as in the case of private cars, information there could be obtained from any source——

The COURT. I do not speak of the question of jurisdiction.

Mr. MOODY. We might take Mr. Armour's most interesting and able articles upon private cars.

The COURT. Take the question where the jurisdiction is not questioned.

Mr. MOODY. Suppose the jurisdiction in a field unquestioned, for instance, in the Bureau of Corporations a question of overcapitalization; of course the Commissioner can go to Massachusetts, and there under the corporation law in force obtain all the statistics with regard to the capitalization of corporations formed under the law of Massachusetts. He may, if he chooses, take the works of a standard writer. He may talk with an economist. He may talk with a man who is familiar with any one great corporation, and get his advice and his information. What Congress has done in the first part of the act is to impose the duty upon the Commission of obtaining in any way, by the broadest inquiry, any sort of information which would be useful to it in the performance of its duty. Then Congress proceeded further, and recognizing that the time might come when it would be desirable for the Commission to call witnesses, Congress conferred upon it the power of requiring by subpœna the attendance of witnesses and the production of books. In that connection, and in that connection alone, was there a necessity for giving immunity, and I submit that in that connection, and in that connection alone, was immunity in point of fact given by the law enacted by Congress.

There is still another matter in which the Commission can get knowledge under the provisions of the Cullom Act. Let me invite your honor's attention to the substance of section 15. That is a section which provides that the Commission may make an investigation as to whether a common carrier has done a wrong to any other citizen, taking the broadest terms; whether the common carrier has violated any of the laws and rules of the Cullom Act to the detriment of a citizen. It is provided that the Commission shall hear and determine in that case, and then if it feels that a case is made out shall give notice to the carrier to cease and desist from the violation of law which is found to obtain and to make reparation for the injury. It is under that section that the great work of the Interstate Commerce Commission is done. In effect, that is an order by the Interstate Commerce Commission, although it is not clothed in the form of an order.

Now, let me go, if your honor please, to section 20. Let me invite your attention to the provisions of that section. Your honor asked of me my view of the meaning of the words "lawful requirement." The answer to that is found in this section. In section 12 the Commission had been given power to require, by subpœna, testimony and evidence. In section 20 the Commission is given power to require information without subpœna. Let me read it: The "Commission is hereby authorized to require annual reports from all common carriers subject to the provisions of this act, to fix the time and prescribe the manner in which such reports shall be made, and to require from such carriers specific answers to all questions upon which the Commission may need information." Let me stop there. I have been through this act from its first to its last letter, and it is the only case in which the Commission is given power to "require" anything, save only the provision in section 12, where the Commission is given power to require testimony and evidence by subpœna. The law itself makes the distinction. The evidence and the testimony is required by subpœna. Information sought for under the provisions of section 20 is required by the Commission without a subpœna. It is a lawful requirement.

The COURT. Is there a duty to answer?

Mr. MOODY. Yes.

The COURT. Without a subpœna?

Mr. MOODY. Yes; it is a lawful requirement, but it is not a requirement by subpœna.

The COURT. Well, then, is the immunity as broad as the liability?

Mr. MOODY. Not at all. If human language can do it, if the will of the legislature can be heard and obeyed, your honor, I think I shall demonstrate that there is no immunity given, either for the information which is obtained or for the returns or information furnished in obedience to the lawful requirements, but that the immunity is given solely for the evidence and testimony furnished in obedience to the power of the Commission to require such evidence and testimony by a subpœna.

The COURT. Although the citizen may be punished for refusing?

Mr. MOODY. If it is lawful requirement; yes. I will come to that.

The COURT. He may be punished for refusing to answer the lawful requirements?

Mr. MOODY. Yes.

The COURT. And the Commission may not subpœna?

Mr. MOODY. Yes.

The COURT. Go ahead and punish him?

Mr. MOODY. Yes; if it is lawful. I am not afraid of my logic. Of course it is not lawful; he can not be condemned for failing to answer a question under their requirement which has any tendency to incriminate him, because he is not bound to do that. He can not be compelled to do that anywhere. He need not claim his privilege in the sense of a witness; but suppose he shows to the court that he declined to obey this lawful requirement because it would have a tendency to compel him to produce evidence against himself, he would be acquitted precisely upon the principle that Boyd (116 U. S., 616) was acquitted by the Supreme Court of the United States. In that case Congress had enacted a law which in effect compelled the citizen to produce evidence which would tend to incriminate.

Mr. ROSENTHAL. The requirement——

Mr. MOODY. Please let me finish my thought. And the Supreme Court held that that was not a lawful obligation put upon him by the law and that the act which sought to do it was unconstitutional.

Now, let me go to section 20, a little further, and see what section 20 is. The question which we have just been discussing is apart from the discussion of this section, because this section authorizes the Commission to require only reports from all common carriers. No; I withdraw that. The discussion we have just had is in point, because a common carrier need not be a corporation, of course. The Commission is authorized to require annual reports from all common carriers and to require from such carriers specific answers to all questions upon which the Commission may need information. Now, let us see what the annual reports are.

"Such annual report shall show in detail the amount of capital stock issued, the amounts paid therefor, and the manner of payment for the same; the dividends paid, the surplus fund, if any, and the number of stockholders; the funded and floating debts and the interest paid thereon; the cost and value of the carrier's property, franchises, and equipments; the number of employees and the salaries paid each class; the amounts expended for improvements each year, how expended, and the character of such improvements; the earnings and receipts," and so on; the operating and other expenses, balance to profit and loss, and a complete exhibit of the financial operations of the carrier. "Such reports shall also contain such information in relation to rates or regulations concerning fares or freights, or agreements, arrangements, or contracts with other common carriers, as the commission may require." That is, these reports, which are made obligatory upon the carrier, subject of course to his constitutional rights, and which the Commission is authorized to obtain, must contain information as to the rates or regulations concerning fare or freight; that is, information upon every subject relevant to prosecutions for rebates or discriminations, and also agreements, arrangements, and contracts with other common carriers, and therefore information that is relevant upon every combination made by a common carrier in violation of the Sherman Act. Now, in that connection in no way is immunity given.

The COURT. Isn't it possible, under your contention, to use the citizen without putting him in position to get the benefit of the immunity?

Mr. MOODY. No; I think it is not. I think it is not, sir.

The COURT. Either that or else he has got to claim it.

Mr. MOODY. Well, certainly, if you proceed upon the theory that information can be given—can grant immunity outside testimony and evidence under oath—if you proceed upon the defendants' theory of course he has got to claim immunity. Of course it is preposterous to suppose that a governmental officer going around and investigating what are presumed to be the lawful operations of individuals and corporations in the conduct of their business should suddenly find himself entrapped into conferring an immunity which he never intended to confer, nobody thought that he ever was conferring, unless somebody had put him on his guard by making a claim that he had entered upon a field out of which immunity would grow.

The COURT. General Moody, take the converse. Congress legislates for the mass of citizenship, the ignorant as well as the skillful and the alert.

Mr. MOODY. Yes.

The COURT. Isn't there much more danger that your rule would entrap an ignorant citizen than that any officer should be entrapped by the citizen?

Mr. MOODY. No; I think not.

The COURT. Would not the citizen have to be a skillful citizen to meet your rule?

Mr. MOODY. No; I think not.

The COURT. Wouldn't he have to have legal advice?

Mr. MOODY. Well——

The COURT. I simply throw it out for your consideration.

Mr. MOODY. No; I think not, because he would ordinarily be called as a witness, and there, according to my concession, he would be in a position where the immunity would grow out of the testimony itself, without any necessity on his part of claiming it.

If your honor please, there is no hardship in asking people who have violated the law to claim the privilege which the Constitution gives to them. The law was not passed for the encouragement of crime, and it ought not to be administered for the encouragement of crime. If these people are innocent they have nothing to fear.

The COURT. I would like to have you, before you conclude, address yourself to the purposes of the act—the broad purposes of the act.

Mr. MOODY. Yes; I shall most certainly do that, your honor.

The COURT. Do you care to take the five minutes' recess?

Mr. MOODY. Yes, sir.

(Recess for five minutes.)

Mr. MOODY. If a statute should in terms provide that any governmental body might acquire information from any citizen and then say that no citizen should be excused from answering any question on the ground that it might incriminate him, and stop there, the statute would be obviously unconstitutional, and the same chances of entrapping people into answers would exist in that case as would exist in the illustration which your honor presented to me. To show clearly how Congress distinguished between the requirement by subpœna and the requirement of reports and information under section 20, I now proceed to show to your honor the different methods of enforcing those two powers of the Commission, which were provided distinctly by the act.

Your honor already knows that under section 12 the power to enforce obedience to a subpœna to testify or to produce evidence is vested in a court, to which application may be made in case of contumacy or refusal to obey the subpœna, and the court is authorized and empowered to issue an order compelling the witness to obey the subpœna.

The power to compel obedience to the requirements to furnish a report or information is contained in another section altogether—section 16. Section 16 says this: "Whenever any common carrier, as defined in and subject to the provisions of this act, shall violate, or refuse or neglect to obey or perform any lawful order or requirement"—the order is such as is contained in section 15 and the requirement is such as is contained in section 20—"to obey or perform any lawful order or requirement of the Commission created by this act, not founded upon a controversy requiring a trial by jury," the Commission or the person interested in the performance, obedience to such order, or the obedience to such requirement, may apply in a summary way by petition to the circuit court of the United States sitting in equity in the judicial district in which the common carrier complained of has its principal office. And then there follows in the act provisions for the trial of that controversy.

The act carefully goes on and recognizes that some such order or requirement might, according to the course of the common law, demand a trial by jury. So it says further in the next clause of the same section, "If the matters involved in any such order or requirement of said Commission are founded upon a controversy requiring a trial by jury," then it shall be lawful for the Commission or the person interested to apply by petition to the circuit court of the United States sitting as a court of law, and the procedure consequent upon that application is prescribed in detail in the statute.

Let me, then, for the purpose of showing how clearly Congress intended to distinguish between sworn testimony and evidence and the unsworn answers to requirements—lawful requirements—again emphasize the fact that the power to compel compliance with the subpœna is provided for in section 12 of the act, and the court is there authorized to make an order, while the power to compel a compliance with a lawful requirement is contained in section 16 of the act, a distinction being made between a controversy requiring a trial by jury and one not. In the one case the court sits as a court of law and in the other case it sits as a court of equity. Could anything more clearly indicate that Congress at least had in view a different subject-matter, with different consequences, to which the claim of privilege and the claim of immunity growing out of the privilege did not apply at all when it made it incumbent upon the citizen to obey the "requirement" of the Commission?

There are, therefore, three sources of information or three sources of knowledge open to the Commission: First, the information provided for in the first part of section 12, which is knowledge in its broadest form; second, the reports and answers to inquiries which the Commission may require, as provided by section 20, and, third, the

sworn testimony or evidence of a witness, which is provided for in the latter part of section 12, and from which the excuse of incrimination is taken away and the immunity from prosecution is substituted in its stead. And it is the Government's contention that the immunity under this act is offered only under the third of these general sources of knowledge to the Commission, because it is only there demanded as an equivalent to the constitutional privilege, and it is only there, therefore, given. If there is anything unconstitutional in the other part of the act, your honor will not proceed at a trial at nisi prius upon any theory of unconstitutionality.

I have said that the defendants have contended that all the information and the reports give immunity, because they are given under the compulsion of the law. They can stand upon no narrower ground, because, as I have said, compulsion in fact was not exercised by Garfield. The only compulsion consisted in the fact that he was the visible presence and embodiment of the compulsion of the law. It is not that he compelled, but that his power compelled. It is his power to act, and not any action which he took, which is claimed to be compulsion in this case. Let us see where that contention leads. Mr. Rosenthal, in his most admirable argument, was not afraid of his logic. He carried it to its extreme. At the close of his first day's argument I asked him this question:

"The Interstate Commerce Commission has pursued the practice since its origin in the exercise of these broad powers, which I think you have accurately described, of obtaining from common carriers a great amount of information relating to the conduct of their business. That information much nearer touches the question of unlawful discrimination and much nearer touches the question of unlawful combination with other roads than the evidence in this case, as I understand it, touches the allegation of combination. Now, would it be your contention that the information obtained by the Interstate Commerce Commission in that way has given these railroads, or the officers furnishing information, immunity from prosecution under the law?"

Mr. ROSENTHAL. "I can answer that at once. The question as put is incomplete, because it fails to indicate how the information was obtained."

Mr. MOODY. "In the exercise of their authority as a commission."

Mr. ROSENTHAL. "Yes; I know; but how in the exercise of their authority? Broadly speaking, I should say that if the information is obtained from any individual in the exercise of the granted authority, the authority granted under section 12, immunity would follow."

Mr. MOODY. "My question includes that assumption that the information is obtained in the exercise of the authority contained in this grant of power."

Mr. ROSENTHAL. "Yes."

Mr. MOODY. "I am very glad to get your answer."

Mr. Brown in his eloquent appeal for his client made the claim that anybody who performed a duty imposed upon him by law could not be said to act voluntarily. He said, "he only consents who has the right to refuse." That is to say, the man who keeps his contracts, the man who pays his debts, the man who refrains from stealing his neighbor's purse or debauching his neighbor's wife is acting under the compulsion of the law and can not be said to be a voluntary agent. It is an abuse of words. Is there no such thing as a voluntary obedience to the law? Action in obedience to the law is only involuntary when the law in addition to delivering its commands exercises the strong arm of compulsion to enforce them. The power to compel is quite different from the compulsion itself, which is the exercise of that power.

Mr. Miller claimed that where the law prescribes the duty of testifying, if one voluntarily, without invitation, comes forward with any statement concerning any offense in which he may have participated, he may be regarded as making that statement under the compulsion of the law and that where immunity is provided by the law he is entitled to that immunity. I took his exact words and they were these: "That which is done in pursuance of a legal duty or obligation obviously is done under legal compulsion."

Mr. MILLER. It was somewhere along there stated to be where the law required a specific——

Mr. MOODY. Yes; I understood that to be so; that you did not take so broad a ground as Judge Brown took. That where the law required some specific conduct on the part of a citizen——

Mr. MILLER. Specific act.

Mr. MOODY. Specific act. If he voluntarily and without invitation complied with the law he may be said to be acting under compulsion.

Mr. MILLER. I think that is too broad.

Mr. MOODY. No; I think it is not. I do not wonder that my learned friend shrinks from the consequences of his statement, because I will show in a moment that his claim is based upon no authority and no reason. It is utterly at variance with the constitutional privilege, and utterly at variance with the terms of the immunity act itself. He gave an illustration in order to make his meaning clear. He said if there were an immunity act with reference to offenses committed in the postal service, and an employee of the post-office here had committed a crime, and came to the proper person without any invitation whatever, apparently voluntarily in every respect, except that he was obeying the law, and made a statement of his offense, that from that statement alone he would obtain immunity. That was the illustration given. It is a most extraordinary——

Mr. MILLER. It was added to that if the law——

Mr. MOODY. If the law gave immunity.

Mr. MILLER. If the law compelled him to do that specific act.

Mr. MOODY. If the law compelled him to do it.

Mr. MILLER. That specific act, and he went in obedience to the law and did it.

Mr. MOODY. The contention here is that this information in its broadest terms was furnished in obedience to the compulsion of the law to do that specific act. Let us see where that most extraordinary claim leads to. What would be the consequences? We might suppose that the confessions and statements in obedience to the law might be made at Washington, made possibly to the Interstate Commerce Commission, possibly to the Commissioner of Corporations, possibly to the Attorney-General. This is a great discovery of my learned friend, for which uncounted generations of captains of industry will thank him. Washington will become the Alsatia to which they can resort for immunity for their offenses. It will be much easier, much better, instead of running away from a subpœna to run toward the governmental agent and serve a confession upon him.

Anybody in this land who is now seeking to avoid the service of a subpœna will thank my learned friend for giving him a very much shorter road to travel if he need only travel to the representative of the Government whose laws he has violated and obtain his immunity. Washington would become a great resort, not only in winter, but in summer. All the people who are violating the laws of the land may go there at intervals and obtain their immunity. All they have to do is to go there in obedience to the compulsion of this law. All the officers of a corporation have to do is to go there in obedience to the compulsion of this law and serve upon the Commissioner of Corporations a statement with regard to their conduct and obtain immunity. They can do it at intervals. The law is a license to commit crime. Now, I can fancy those gentlemen gathering together there. I can fancy Mr. Swift and Mr. Armour, and their journey to Washington, and their meeting with some other great magnate who has been there, and who has washed, in what I may call the "Miller's bath," because they will go there, as to Carlsbad and the French Lick Springs, in order to cleanse themselves of misdoing. I can imagine them meeting and saying, "Good morning; good morning, Brother Rockefeller, have you had your immunity bath this morning?" Look at the absurdity of it. [Laughter.]

The COURT. The bailiff will preserve order. If there is any further demonstration in the court room the court room will be cleared.

Mr. MOODY. Look at the absurd consequences, which I am not overstating at all, if anyone has a right, in obedience to this law, voluntarily to make a statement and thereby claim immunity from it. And yet it is absolutely essential that our friends should resort to that ground in order to maintain their case.

Now, I find further confirmation of the view that immunity arises out of the sworn testimony, and the sworn testimony alone, of a witness, in the words of the act of 1893. Let me consider that act generally in the first place. It speaks of "witnesses." It speaks of "testifying." It speaks of "producing evidence." It speaks of "subpœna." It speaks of "perjury." All these are terms of art, having a well-known meaning. Why should they be warped from the natural significance which attaches to them, especially, when the giving to them their natural significance is in harmony, as I have sought to show, with the whole scheme of the law?

What does the word "testimony," for instance, mean when it is used in describing the statements of a witness before a tribunal authorized to administer an oath? How false a construction of the word it is to give it another meaning than the natural meaning which the law attaches to it. If it had been intended by the statute to give immunity for information, it would have been the simplest thing in the world to have added that word. I am not going to give definitions of "testimony" and "evidence," and the "production of evidence" and "witness," and "subpœna." They are all well known to your honor. They have but one meaning, and that is the meaning which the Government attaches to them. We are to consider that we are not reading a novel or an essay. We are reading a statute. And there is nowhere in the wide world where words are employed after a greater or more careful scrutiny of real meaning than they are in a statute, because that statute must be compact. And the rule established by all courts from the beginning of reports of the decisions of the courts is that words should be taken in their natural meaning, and that words having a legal significance should in all cases be interpreted as having their legal meaning. Suppose anyone had suggested in the act of 1893, after "testimony," to have inserted "under oath." The body in which that amendment was proposed would have said that it was surplusage; would have said there is no need of qualifying "testimony" by the words "under oath," because testimony is of necessity under oath. What is the reason, what is the underlying reason, why a corporation can not get immunity, as the court decided last Monday it could not? It could furnish all sorts of information. It can furnish returns, but it can not give testimony, because it can not be sworn as a witness. A corporation is a person for very many purposes, as is already apparent to your honor, not only from the citation of authorities here, but from your honor's own investigations; but it can not be conceded to be within the word "person" where it is used in such a manner as to indicate a person who can hold up his right hand and take the oath.

It is our misfortune that we have not been able to make ourselves clear upon our position as to the effect of the proviso in the act of 1893. This proviso: *"Provided,* That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying." I do not claim that this proviso creates the offense of perjury or that one indicted for perjury in his testimony before the Interstate Commerce Commission would be punished by virtue of that provision of the law. It simply recognizes the existence of perjury. Let us see the immunity clause: "But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpœna," etc.: *"Provided,* That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying."

The exact effect of that provision is to indicate clearly that the testimony out of which the immunity must grow is testimony out of which a prosecution for perjury may grow. "So testifying." Testifying before the Commission and producing evidence before the Commission. Providing that a person "so testifying" may be punished for perjury. It is a clear indication of the intent of Congress that the testimony out of which the immunity grows is testimony upon which, if false, a prosecution for perjury may be based.

I am not claiming of necessity that the subpœna which the Commission is authorized to issue to compel testimony and evidence is an indispensable prerequisite to the giving of such testimony and evidence out of which immunity may grow any more than I am contending that this provision with regard to perjury is a provision by the terms of which a prosecution for perjury may be instituted. I am contending that both of those provisions are of significance in demonstrating to your honor the meaning of the words "testimony" and "evidence," which lie between them. We have at the entrance of the field of immunity a gateway marked "subpœna." We have at its exit a gateway marked "perjury." Should we not expect to find in the field itself the words we do find—"testimony" and "evidence?" Should we not expect to find that the kind of information obtained by subpœna, the kind of information which is capable of being punished by perjury, is testimonial in its nature?

Let us see. Let me give a simple illustration of what I mean. Here is a field of information, there [indicating]. Nothing about testimony. Nothing about evidence. Nothing about any compulsory process. Here is a field of information and reports [indicating], made in obedience to lawful requirements. Nothing about evidence. Nothing about testimony. Nothing about subpœna. Nothing about perjury. And in connection with either of those fields the word "immunity" is not used at all. Here [indicating] is the great field in which the plant "immunity" grows, and it is marked "evidence;" it is marked "testimony;" and it is bounded on the one side by a fence called "subpœna" and on the other side by a fence called "perjury." Can anyone doubt the nature of the territory that lies between those two boundaries?

I find still further confirmation of my interpretation in the penal section of the act of 1893. Let me first deliberately read the whole of it. [Reading:]

"Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission, shall be guilty of an offense, and upon conviction thereof by a court of competent jurisdiction shall be punished," etc.

I have shown that the Cullom Act contemplates two distinct methods of obtaining knowledge or informtaion from books and documents. The first method is that pursued when the Commission, in conformity with its powers, requires, by a subpœna to a witness, the production of books, documents, etc. And second, where the carrier itself is, in obedience to the lawful requirement of the Commission, without subpœna, directed to furnish it with the substance of those books and documents or to answer inquiries with respect to them.

I have argued that to the first of those powers mentioned—namely, the power to require by subpœna the production of papers and the testimony of witnesses—there was attached the privilege of immunity in exchange for the constitutional privilege which was taken away. I have shown that in connection with the production—the answer to the lawful requirement, by reports or otherwise—no immunity is given. And I have argued the matter of the separation in the law, a separation clearly followed through the whole scheme of the law, which enforces the power of the Commission in one case in one way by one section, and enforces the power of the Commission in the other case in another way by another section. I say I have argued, from the separation of those two functions of the Commission, and from the attachment of the privilege to one of the functions, and its exclusion from the other function, that immunity is given in the one case and withheld in the other.

Now, if your honor please, if I can show that that separation that was made in the original Cullom Act is recognized and brought forward and carried into the very act of 1893 itself, the very act in which immunity is given, and that in the one case immunity is given, and in the other it is withheld, I have completed my demonstration. I proceed to do that now. The penal clause makes it an offense to do four things: First, to neglect or refuse to attend and testify; second, to answer any lawful inquiry; third, to produce books, papers, tariffs, contracts, agreements, and documents in obedience to the subpœna of the Commission; fourth, to produce books, papers, tariffs, contracts, agreements, and documents in obedience to the lawful requirements of the Commission.

The COURT. What is the difference between three and four?

Mr. MOODY. The third is to refuse to produce books and documents in obedience to the subpœna of the Commission——

The COURT. Yes.

Mr. MOODY. And the fourth is that it is an offense to refuse to produce books and documents in obedience to the lawful requirement of the Commission.

Now, then, I have brought into the very act of 1893 the distinction which was created by the Cullom Act and carried all through the scheme of the act. The refusal to produce documents in obedience to a subpœna and the refusal to produce documents in obedience to a lawful requirement are both punishable by the law. If a person refuses to produce documents or books or papers in obedience to the subpœna of the Commission he is indicted in one form of indictment. The indictment would allege that he had been duly subpœnaed by the Commission to produce certain books and papers and that he had neglected and refused to do so. If he had refused to produce books and papers in obedience to the lawful requirement the indictment would allege that the Commission had lawfully required him to produce those papers and he had failed to do so. The offenses are absolutely distinct, and an entirely different consideration would arise on the trial of an indictment under those two forms. So I say again, and I ask your honor to follow me there, that in the very act of 1893 the distinction which I have demonstrated to exist under the original Cullom Act between the requirement of the subpœna and the lawful requirement of the Commission, is recognized, maintained, brought forward, and put into the very law of immunity itself. In the penal section the two methods of producing documents and books are distinguished and separately stated, and each one is made an offense. Let us go back, however, to the immunity section, three or four lines down, and we shall find that while immunity is given where a witness produces documents in obedience to the subpœna, it is withheld where he produces documents in obedience to the lawful requirement. Because the language is that he shall have immunity where he produces documentary evidence "before said Commission, or in obedience to its subpœna, or the subpœna of either of them." The first word "or" must be used in the sense of "either," or it could have no possible meaning. The section would then read "either in obedience to its subpœna or the subpœna of either of them." The immunity is given where the documents are produced in obedience to the subpœna of the Commission or either of the Commissioners; but it is not given where the documents are produced in obedience to the lawful requirement of the Commission.

Mr. MILLER. Under that law——

Mr. MOODY. Wait a minute. And if it is said that this is a fine distinction, it is the distinction the law itself makes.

Mr. MILLER. Learned counsel did not read all of it.

Mr. MOODY. I read every word that is material, and I would like you to say what there is material that I did not.

Mr. MILLER. You did not read all of the alternatives.

Mr. ROSENTHAL. There are two others.

Mr. MOODY. Oh, "in any such case or proceeding." "In any such case or proceeding." Brother Rosenthal disposed of that the other day.

He showed that prior to the act of 1893, this act under consideration, the privilege was taken away and the substitute of immunity given in its place only where testimony or evidence was produced before the Interstate Commerce Commission. The act of 1893 does the same thing in any cause under the interstate-commerce law in any court.

Those words mean—"in any cause or proceeding"—that the immunity is in a jurisdiction broader than that of the Interstate Commerce Commission, but they have nothing to do with the character and the nature of the limitations of the immunity itself. It grows out of the testimony or evidence given in obedience to the subpœna of the Commission, or in obedience to the subpœna of either one of the Commissioners, or given in any cause in any court. The omission of the immunity growing out of documents produced in obedience to the "lawful requirement" is not only significant, but it is absolutely conclusive, because the distinction between the production of books under those two circumstances is brought forward, maintained, and expressed in the clearest words in the act itself.

Mr. MILLER. Isn't the proceeding in section 16, to which counsel has referred, one of the proceedings referred to in the act of February 11?

Mr. MOODY. Not at all. Not at all. We are not engaged in any such proceeding as that here at all.

Mr. MILLER. You are engaged in a proceeding to mutilate the act?

Mr. MOODY. I am engaged in interpreting the act and in asserting the meaning, the plain meaning, of words never before in any court in the land disputed until this case. I think, may it please your honor, that if words can do it, if the application of right principles to the interpretation of statutes can do it, I have demonstrated that the immunity conferred by the act of 1893 can only grow out of some sworn testimony or evidence under the provisions of the interstate-commerce law——

Mr. COWIN. Will the Attorney-General permit me——

Mr. MOODY. Just a moment. Later I shall claim, that being so, neither Mr. Garfield nor his subordinates, nor any other person, can amend that act or extend its benefits to any man who is not within its terms.

Mr. COWIN. May I ask just a question before you leave that?

Mr. MOODY. Yes, sir.

Mr. COWIN. Suppose Mr. Garfield went to A and said, "I am prepared to investigate your packing business. There is certain information you will have to give me as I am not able to get it elsewhere. I have the power to compel you to give me this information, and, if necessary, I will use that power, so you can see you will have to comply with my demands." He says, "I know you are required to get this information, and that I must give it; that you can and will compel me, and for that reason I comply with your demand."

He has been informed that probably he ought to have a subpœna and be sworn, and he says, "Will you please hand me a subpœna?" And a subpœna is handed to him. "Will you please swear me?" And he is sworn. He gave the information fully and truthfully. They then went to B and made the same requirement. B made the same answers. B did not know—just as truthfully, and just as fully—B did not know anything about a subpœna or an oath, and he didn't say anything about it. Now, is there any difference between the two parties on the question of immunity?

Mr. MOODY. Of course there is a difference; just as there is between two persons, one of whom stands upon his right to remain silent, who makes no confession, makes no answer to the officer, and the other of whom does not remain silent, does testify, and does make a confession, and does make incriminating statements. Now, it is no answer to an application of the rules of law to the man who was not silent that the man was ignorant of the provisions of the law of the land and didn't know them as well as my learned friends know them here. As I said, the act—the laws are not passed for the encouragement of crime or the protection of offenders.

Mr. MILLER. Nor to entrap them.

Mr. MOODY. No; nor to entrap them. I want to consider that these defendants are innocent until they are proven guilty. They have the right under the law so to be considered. I am willing to give them every presumption that belongs to them. If they are innocent, they have nothing to fear from any inquiry. If they are guilty, it is no burden or hardship upon them to ask them to comply with the conditions and burdens of immunity which Congress has enacted.

There is just another confirmation which I think comes to my contention from the absurdity of the consequences which would follow from the adoption of the rule contended for by the defendants. I invite your honor's attention to section 10 of the act, which creates offenses.

Mr. ROSENTHAL. Section 10?

Mr. MOODY. Yes; section 10. The act in various preceding sections had made it unlawful to practice any unjust discrimination, or give undue or unreasonable preference, or fail to give proper facilities for the interchange of traffic, or to discriminate between connecting lines, or to violate the long and short haul provision, or to pool their earnings, or to divide their traffic, or to fail to print schedules or rates, or to reduce or advance rates without certain prescribed preliminary notice, or to file all public rates and fares and charges, or to enter into and contract to prevent the shipment of freight from being continuous.

Section 10 makes the disobedience of those provisions of the law an offense; misdemeanors. Any common carrier subject to the provisions of this act, or any director, officer, receiver, or trustee, or the lessee or agent, or person acting for a corporation who is a common carrier, who shall willfully do, or cause to be done, or shall willingly suffer or permit to be done, any matter, act, or thing in this act prohibited or declared to be unlawful, or shall aid or abet it, shall be guilty of a misdemeanor, which shall be punishable by certain penalties prescribed in the law. And any common carrier who shall be guilty of false billing, false classification, false using, or false report, or who by any device or means shall practice discrimination, shall be guilty of a misdemeanor, and shall be punished in the manner prescribed by law.

Those offenses are largely those of discrimination. The first foundation to every prosecution under section 10 would be the information furnished to the Commission under section 20 of the act, because section 20 authorizes the Commission to require from the carrier information in relation to rates, or regulations concerning fares and freights, or arrangements or contracts with other common carriers. There have been many prosecutions—and this is, perhaps, an answer to my learned friend's question this morning as to the practice—there have been many prosecutions under section 10 and many convictions under section 10. Your honor is familiar, perhaps, with many of them; and no one ever thought that he was immune from prosecution because, being an officer of a railroad, under section 20 of the interstate-commerce act, he had furnished information which was material upon the question of that prosecution—not only material, but vitally material, on the question of that prosecution.

The interpretation of the act which my distinguished friends laid before your honor leads to the conclusion that Congress in one section of the act created offenses and prescribed their punishment and in another section of the act gave the Commission authority to require from the carriers, and the officers of the carriers, the very information which would be relevant upon the indictment, and that by doing that had rendered every prosecution under the penal section of the code utterly impossible.

I wonder what the distinguished author of that act, the venerable Senator from this State, whose name is inseparably connected with it, and to whom it brings one of his greatest titles to fame, would say to that interpretation; would say to an interpretation which accused him of drawing and fostering and permitting and enacting legislation which was contradictory and absurd.

I am not proposing to urge upon your honor the contention that was so ably argued by my friend the district attorney, that immunity can not be obtained except after an order of court. That is one possible aspect of this case. I am willing to concede, for the purposes of the argument, and I am willing to say that on the whole it is my opinion, from a study of this act, that immunity may be obtained short of the compulsory order of the court. I am willing to concede that the subpœna of the Commission and the imposition of the oath upon the witness by the Commission creates an obligation on his part to testify to which he may yield, although the law, for his protection, gives him the right to appeal to the court. If he does yield to the constraint of subpœna and the oath, and does give the testimony relating to an offense with which he may be subsequently charged, I am ready to concede that he would get the immunity growing out of such testimony. I think this may be inferred from the Brimson case (Interstate Commerce Commission *v.* Brimson, 154 U. S., 447), a case which I believe has not received the attention from counsel which its importance deserves. It is a case which deals with this whole procedure, and deals with it under a challenge by a party who had been summoned under the provisions of the Cullom Act. In that case the Commission was engaged in examining whether rebates were given or discriminations practiced in favor of the Illinois Steel Company by the railroads running out of Chicago in various directions; the claim being that discrimination was brought about under the device of switching railroads, which were attached to the plant of the Illinois Steel Company.

Those switching railroads were incorporated—five of them were incorporated—some, I think, under the laws of this State, and Brimson was the president of all five of the switching railroads, and the question was asked of him with respect to the interest of the Illinois Steel Company in these switching railroads. He declined to answer, basing his declination on the claim that the whole provision was unconstitutional. The circuit court for this circuit sustained, as your honor well remembers, the claim of Brimson and his associates; and the case then went for final adjudication to the Supreme Court of the United States. The question there was, whether these powers, given to the court to aid the Interstate Commerce Commission to obtain testimony of witnesses who had been subpœnaed by them, were judicial powers; it being contended, on the one hand, that they were judicial powers and could properly, in case of dispute, be exercised by the judicial department of the Government of the United States. It was claimed, on the other hand, that this legislation under the Cullom Act made the courts mere assistants of an executive and administrative body, and that no such power as that within the Constitution could be conferred on the courts.

The majority of the court held that where the Commission had issued its subpœna and brought its witness before it and imposed the oath upon the witness and the witness then disputed, for any reason, the right of the Commission to interrogate him and obtain testimony from him, the Interstate Commerce Commission insisting it had that right, that the dispute between the two created a case or controversy within the meaning of the Constitution of the United States, and that the settlement of that case or controversy was an appropriate exercise of the judicial functions. That is what the case decided. I ask your honor's attention to a little of the reasoning of the case. I ask your honor's indulgence, for I believe this is the last book of any kind to which I shall refer. On page 476 Mr. Justice Harlan, giving the opinion of the court, said:

"Upon everyone, therefore, who owes allegiance to the United States, or who is within its jurisdiction, enjoying the protection that its Government affords, rests an obligation to respect the national will as thus expressed in conformity with the Constitution. As every citizen is bound to obey the law and to yield obedience to the constituted authorities acting within the law, this power conferred upon the Commission imposes upon anyone summoned by that body to appear and testify, the duty of appearing and testifying, and upon anyone required to produce such books, papers, tariffs, contracts, agreements, and documents, the duty of producing them, if the testimony is sought, and the books, papers, etc., called for relate to the matter under investigation, if such matter is one which the Commission is legally entitled to investigate, and if the witness is not excused, on some personal grounds, from doing what the Commission requires at his hands.

It is from that language that I have reached the conclusion which I stated to your honor, that the issuance of the subpœna to a person to become a witness and produce documents, or give testimony, imposes upon him a sufficient legal compulsion, to which, if he yileds, there being no dispute about it, he is entitled to the immunity given to him by the express terms of the act; that the provision authorizing him safely to dispute the authority of the Commission is given to him for his sake, and because the Commission is not a judicial body empowered to pass upon the rights of the people of the United States. And this consideration appears very fully from the language of Mr. Justice Harlan.

The COURT. Perhaps this is as good a time as any to adjourn.

Mr. MOODY. I have every reason, if your honor please, to believe that I can conclude this afternoon, but I want to be sure about it, and if your honor will give me fifteen minutes more now, and shorten the recess to that extent, I am sure I can.

The COURT. Very well; proceed.

Mr. MOODY. If your honor will call my attention to it at the expiration of that time.

Now, in describing the powers of the Interstate Commerce Commission, Mr. Justice Harlan uses this language, page 485:

"The inquiry whether a witness before the Commission is bound to answer a particular question propounded to him, or to produce books, papers, etc., in his possession and called for by that body, is one that can not be committed to a subordinate administrative or a subordinate executive tribunal for final determination. Such a body could not, under our system of Government and consistently with due process of law, be invested with authority to compel obedience to its orders by a judgment of fine or imprisonment."

And again, on page 489:

"If there is any legal reason why appellees should not be required to answer the questions put to them, or to produce the books, papers, etc., demanded of them, their rights can be recognized and enforced by the court below when it enters upon the consideration of the merits of the questions presented by the petition."

So, then, we have a clear characterization of the Interstate Commerce Commission, as a body not acting judicially and not capable of passing on the rights of the people of the United States. I have contended that the only ground under the Cullom Act and its supplemental act upon which a person could obtain immunity is that he should have been subjected to testimonial compulsion. I have emphasized both ideas. I have claimed that from the field of the constitutional privilege Congress in the immunity act has brought forward the two fundamental ideas of compulsion—compulsion to testify as a witness.

I come now to a consideration of the act which creates the Bureau of Corporations. It is agreed upon all hands that every limitation which surrounds the granting of immunity under the Cullom Act and under the act of 1893 is applicable to the immunity which may grow out of any action by the Commissioner of Corporations. It is the contention of the Government, however, that there is one other important limitation rendered necessary by the difference between the constitution and functions of the two bodies, and that important difference is contained in the last sentence of the clause of section 6, in which immunity is provided.

This seems to be a very convenient place for me to stop, your honor, at this point. Perhaps it would be better to stop here.

The COURT. Very well.

Whereupon a recess was taken until 2 o'clock p. m. of the same day.

MARCH 20, 1906—2 p. m.

Whereupon court convened pursuant to recess.

Mr. MOODY. At the adjournment of court this noon I had concluded my discussion of the immunity which is conferred by the action of the Interstate Commission under the Cullom law. I had endeavored to prove that that immunity was coextensive with the constitutional privilege, and as that privilege attached only to a witness under oath the statutory substitute of immunity attached only to a witness under oath. I have endeavored to show that both by a careful study of that part of the act which expressly relates to immunity and by a development of the whole scheme of the act. I had concluded that the Cullom Act was not a delusion or a mockery or a snare set for the unwary feet either of the citizen or of the Government, but a coherent act, effective in its dealings with the great problems to which it relates, protecting alike the operations of the Government through all governmental agency and every just right that every citizen may claim. I have regarded that discussion as conclusive of this case as a matter of law.

I pointed out that it was in agreement between all the counsel that every limitation which surrounded the immunity which grew out of the Cullom Act would surround any immunity which might grow out of the act creating the Bureau of Corporations, and I have advanced for your honor's consideration the claim that there was another limitation, another restriction of immunity in the act creating the Bureau of Corporations, and that that limitation existed in the last sentence of the clause by which the immunity is conferred, and was created alike in the interest of the citizen and in the interest of the Government. I have said to your honor that that restriction—the discussion of which I shall soon approach—was born out of the differences in the constitution of the two governmental bodies. Let me allude to those differences briefly.

The Interstate Commerce Commission is the organ through which the Federal Government exercises the undoubted governmental power of the regulation of common carriers engaged in business between the States. It conducts hearings; it arrives at decisions; it gives orders; it makes requirements, all under the superficial similarity to the action of a court of justice. I say superficial similarity because, as appears very well from the Brimson case, the judicial department of the Government is essentially different from any body, administrative or executive in its nature, such as is the Interstate Commission. It acquires its knowledge through information or through returns or through testimony, and that knowledge is acquired for the purpose of aiding that body in the performance of its own duties.

On the other hand, the Bureau of Corporations has a totally different purposes, which has been frequently pointed out by your honor's observations from the bench. In a word, it was constituted for the purpose of making a governmental study of the economical conditions which have arisen out of the lawful operations of corporations. The existence in great number of corporations, sometimes of great power, has been, on the one hand, of inestimable benefit in the development of the country, and, upon the other hand, has brought to the people of the country questions of great moment for their consideration and solution. The purposes of this governmental study were to acquire the broadest knowledge of existing conditions, under the laws as they stand to-day, in order that that knowledge could be communicated to the President and through him to Congress and through Congress to the country so that the conditions which this information disclosed might be studied by the Congress and by the people whom they represent, to the end that, where need may be, remedial legislation could be furnished. The functions of this Bureau were expressly confined to the study of corporations. They had nothing to do with individuals, except so far as individuals must of necessity govern, control, and direct the operations of corporations. Let us for a moment, for the purposes of illustration, consider some of the important questions that the Bureau was constituted to study. The question of overcapitalization, one of the great problems of our time; the question of the propriety of the ownership by one corporation of stock in another; lawful in some of the States and unlawful in some of the other States, one of the most important of pending questions; the operation of private car lines by any other corporation than one which is under the duty and obligation and subject to the restrictions of common carriers; and the desirability of enforced publicity in the proper sense of the word, for in the proper sense of the word the act creating the Bureau of Corporations does not give publicity.

When that act was passed your honor may well remember that between the two Houses there was a dispute upon that subject. The bill as it passed the House of Representatives provided for publicity in the true sense—the acquisition by way of return, or in any other way that might be specified, of information from corporations for publication—so that the people could resort to that for their information. On the other hand, the Senate was unwilling to go as far as that, and confined the use of the information obtained through the study of the Bureau to delivery to the President and allowed him to determine what degree of publicity should be given to it. The important question of the desirability of a Federal license for corporations doing an interstate business, and the incorporation by one State of a corporation authorized to do business in other States, one of the great questions raised by the economic conditions created by the existence of corporations (because, as your honor well knows, some States have gone so far as to create a corporation with powers and duties so broad that they have been unwilling to authorize the exercise of the franchise of that corporation in the State in which it was created, and have confined its powers and their exercise to the other States of the Union), were appropriate questions for study by the Bureau. I might go on, but these questions to which I have alluded are sufficient to indicate the general

nature of the study which was undertaken by the creation of this Bureau. The Bureau was not designed to deal with the unlawful acts of corporations. That was left, as before, with the Department of Justice. If that Department needed strengthening, it could be strengthened as it was strengthened under the act of 1903, which in another connection has been brought to your honor's attention, where money was put at the disposal of the Department of Justice, and that Department was authorized in the cases described therein to employ special counsel and special agents.

Now, having in view that great fundamental and controlling purpose of Congress in the creation of that Bureau, let us see by what steps in the act itself the Bureau was built up. All the law relating to it is contained in section 6. In the first clause there is created a Commissioner of Corporations and one Deputy Commissioner, and one only, and in passing I may say that that distinguishes the case from that brought to your honor's attention by Brother Rosenthal the other day, where the act of Congress had authorized the collectors throughout the country to appoint as many deputy collectors as they saw fit. Congress appointed one Commissioner and one Deputy Commissioner, who, I submit, alone has the power to exercise the authority of the Commissioner of Corporations.

And it further provided for the employment of special agents and other employees of different grades. And then, of course, it provided that the information and data—"such information and data," quoting from the act, as should be gathered by the diligent investigation into the organization, conduct, and management of the corporations which are described by that act—should be reported to the President so that he might be enabled to make recommendations to Congress, and that he might make public so much of such information as he should decide it wise to make public.

By the next clause the Commissioner was given powers of investigation. He was given, so far as they were applicable to his situation, the same broad powers which had been, by the Cullom Act, conferred for different purposes upon the Interstate Commerce Commission, and I need not refer to them.

He was especially given the right to subpœna and compel the attendance of witnesses. Congress doubtless judged that so great a power as that—the power to summon witnesses and put them under oath—could not, or at least ought not to, be conferred by anything except express language, conferring such powers.

Let us see for a moment the reason for that. In the study of the operations of corporations the Commissioner was given authority first to gather information and data, words in no way appropriate for a description of testimony to be obtained from any person. He might obtain that information from articles in a magazine. He might obtain the data from statistics published by the Government of the nation, or of the various States or of cities and towns. He might obtain the information and data from the returns of corporations made to the various States or cities and towns in which they conduct their business. He might obtain the information or data from any source. It, however, might happen that he would wish to obtain information and data, in the broad sense, from some persons who were engaged in the management of corporations, and so he was given the power to subpœna those persons and put them upon their oath. Mark it, if your honor please, that his study was the study of the lawful operations of corporations. It might be, however—though his purpose would not carry him to the investigation of any offenses against the law—that in conducting this inquiry he might reach some person who had been concerned in the guilty transactions, the unlawful transaction of corporations, and the power was given him then, under the conditions named in the act, to obtain their testimony and evidence at the price of the immunity which the Constitution requires as a substitute for its own safeguards. This was foreseen, and therefore the last sentence of that clause of section 6 to which I am now referring was added. It is in these words:

"All the requirements, obligations, liabilities, and immunities imposed or conferred by said 'Act to regulate commerce' and by 'An act in relation to testimony before the Interstate Commerce Commission,' etc., approved February 11, 1893, supplemental to said 'Act to regulate commerce,' shall also apply to all persons who may be subpœnaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section."

Why was this last section added? Have we received an explanation or elucidation of it from our distinguished friends upon the other side of this cause? I have listened carefully and waited patiently for such an explanation. It had some purpose. It is a cardinal principle of interpretation that no part of the law should be disregarded to which a court can attach a meaning. No court has the right to say that that enactment of Congress is without meaning or without force, and I submit that no one has a right to interpret that act to mean anything different from what it says. I say to your honor that its purpose and effect was this: To create a restriction upon the capacity of the Bureau of Corporations to impose requirements, obligations, or liabilities upon the citizen, on the one hand, or to confer upon the citizen, on the other hand, any immunity, unless a great significant act had been performed by the Commissioner, selecting out of the body of the citizenship those persons upon whom obligations and requirements and liabilities might be imposed, or to whom, on the other hand, immunity might be granted.

There is no cause for me to find a reason for this enactment. It is enough that it is there, that it is the law, that it is plain, that it is binding upon us all. As the lawmaking body, Congress has a right to make laws that shall be binding upon us all. But it was added for a purpose. It was added, as I have said, for the protection alike of the citizen and of the Government, and the reason is not far to see. It lies right in the difference in the constitution of the two bodies whose powers and functions I have attempted to lay before your honor. The Interstate Commerce Commission is limited in number. No one pretends that any one of the Commissioners can delegate any one of his powers, or that the Commission all together can delegate any of its powers. It sits under the superficial appearance of a court and decides questions. Witnesses are called before it in an orderly manner, and they testify in the face of the world. On the other hand, the Bureau of Corporations has no semblance of a court. It decides nothing. It orders nothing. It contemplates, it gathers information, it studies that information in behalf of the Government, and it submits the result to the President of the United States, and none of these things does it do under the ordinary forms of judicial procedure.

Mr. Miller's rather extraordinary claim the other day shows the reason of this provision and shows how wise Congress was, foreseeing the condition which would necessarily arise, in providing against it. Mr. Miller said the other day he was not quite willing to claim that the Commissioner of Corporations could multiply himself indefinitely, but he said that wherever the Commissioner of Corporations put any man in charge of a particular part of the operations of his Bureau, that person had the power to do all that Garfield himself could do. When I saw the full force of that contention I exclaimed that it was intolerable that an unlimited number of men could go about the country and by their mere asking of questions of the citizen put him under an obligation to answer, for the refusal of which he could be indicted and punished according to law. It is equally intolerable that an unlimited number of men could go about the country with the authority of the Commissioner of Corporations, scattering acts of grace in their pathway. Congress, foreseeing that the Commissioner would have to exercise his functions by the employment of many subordinate agents, provided against any such results as those that I have described by the enactment of this provision.

Let us take it first from the point of view of the citizen. This sentence says, among other things, that all the liabilities imposed by the act of February, 1893, shall be imposed upon persons who may be subpœnaed to testify. Can that word "subpœna" be read out of the act as useless and meaningless and unnecessary? Suppose Mr. Robertson had asked of some person a question relevant to the investigation, and that person declined to answer. Suppose that person had been presented to a grand jury under the act of 1893—because the liability to indictment under that act is the only liability which my friend Rosenthal the other day said was imposed by this sentence of the clause in question. Suppose, for instance, that Mr. Robertson had, upon the letter of authority from Mr. Garfield, asked Mr. Cudahy to answer some questions that were relevant to the investigation and he had declined, and he was presented by a grand jury. What would become of an indictment which omitted the allegation that the person who had refused to answer had been subpœnaed? Suppose we had such an indictment here. Suppose Mr. Cudahy were here and had demurred to the indictment, which failed to allege that he had been subpœnaed, but merely alleged that Robertson being duly authorized by the Commissioner of Corporations had asked him a relevant question, and that he had refused to answer it. Suppose my friend Rosenthal were here arguing that demurrer, what would he say? He would say that by the act which created this Bureau and gave it the right to acquire information in any way it was provided in express terms that the liability to indictment was imposed only upon those persons who were subpœnaed to give testimony.

Can anyone answer that argument of my Brother Rosenthal? Is there a lawyer great enough living to-day or has there ever been a lawyer skilled enough in the criminal law to answer that argument and induce your honor to overrule that demurrer and put that citizen upon his trial? No. He is not liable to indictment, because the law expressly says that he shall not be liable to indictment until he has been subpœnaed.

Now, if it be true that the issuing of a subpœna is an indispensable prerequisite to the imposition of the liability to indictment of a citizen upon the ground that that liability by the very words of the act is imposed upon him only when he is subpœnaed, by what process of reasoning can it be denied that the immunity, the word which immediately follows liability, is conferred only upon those persons who are subpœnaed in pursuance of the law? My friend, seeing the force of that contention the other day, said that this act might be considered in one way for one purpose and in another way for another purpose. Not so, your honor. I challenge him or any other man to bring any case here, where a court has taken up the same identical statute and construed it in one way for one purpose and in another way for another purpose. The controlling reason why it should be construed in the manner which I present to your honor is, that if it should be construed in any other way it would be an invasion of the liberty of the citizen and a disregard of his rights, such as has never been shown by any legislative body from the beginning of the Government to this day.

So therefore while I have stated in the discussion of the Cullom Act that the subpœna there may not be an indispensable prerequisite to the obtaining of immunity, provided only the witness testifies in accordance with the provisions of that act, I say here that the subpœna provided for in section 6 is an indispensable prerequisite, an indispensable condition, either to the imposing of the liability to indictment or the conferring of the opportunity for immunity. I say that there is no other possible interpretation of that clause of the act. I say that it was a reasonable clause to put in there in view of the character of the Bureau of Corporations and the necessity of conducting its investigations through numerous agents and not, as before the Interstate Commerce Commission, under the semblance of judicial forms, and that if Congress had omitted that provision it would have been regardless of the first rights of the citizen.

An argument was made the other day that that claim of the construction of that part of section 6 led to the absurd consequence that a person gained immunity merely because he was subpœnaed. Oh, no; oh, no. You might as well say that that construction—which is the construction that your honor would have to adopt in case of an indictment—included the propostion that a man was indicted as soon as he has been subpœnaed. The fair meaning of that sentence is that if he is subpœnaed and then refuses to answer a relevant question he is liable to be indicted. If he is subpœnaed and answers a relevant question to an offense which he has committed or which he may have committed, he is entitled to the immunity. If he is subpœnaed there is the chance of an indictment or the chance of an immunity, according to the way in which he shall determine his conduct. I have no words at my command which will make any more clear to your honor my opinion of the reason of that provision in the law and the effect of that provision.

The claim that it is material to consider whether Mr. Garfield delivered any of the information to the Department of Justice I do not understand to have been referred to to any great extent. I can not understand that claim.

The COURT. Some reference was made to it in one or two arguments.

Mr. MOODY. Yes.

The COURT. On this line?

Mr. MOODY. Yes.

The COURT. That not only the act of commerce and labor and the Cullom Act were involved here, but also the appropriation act of 1903, and that the immunity clause under each should have consideration because the investigation Garfield was making was under the Sherman Act and the appropriation act referred to the Sherman Act—no, because the indictment was under the Sherman Act, and that Garfield, from his investigation, furnished facts for the indictment.

Mr. MOODY. Yes.

The COURT. I believe that I have stated it correctly, as gleaned from the arguments.

Mr. MOODY. I will then discuss it from that point of view, your honor.

Mr. HYNES. And for the prosecution.

Mr. MOODY. I will then discuss it from that point of view.

Mr. ROSENTHAL. We did not limit our argument with reference to the act of 1903 on that sole proposition.

The COURT. No.

Mr. ROSENTHAL. Not at all.

The COURT. Mr. Rosenthal took the ground that the immunity clause of the appropriation act was an independent clause; that it was an independent act for any purpose to which it was applied.

Mr. MOODY. In that I will agree with him.

The COURT. Very well.

Mr. MOODY. I will say now that I think that is true, and I will discuss it upon that assumption. In the first place, very briefly let me consider the claim that the delivery of any evidence to the Department of Justice is in any way material in this case upon grounds independent of the act of 1893. Of course the immunity was conferred or not conferred when this information was obtained. If it was obtained under such circumstances as gave to these defendants immunity under the law, certainly that immunity could not be taken away from them because the information was not delivered to the Department of Justice, as that, under the guise of a ruling of law, would reverse the opinion of the Supreme Court in the Counselman case.

On the other hand, if it was obtained in such manner as not to confer immunity at the time it was obtained, obviously no subsequent use of it could be retroactive and have the effect of giving it——

The COURT. I think we are all perhaps at one point on that.

Mr. MOODY. That is all I intend to say, because I think——

Mr. HYNES. The supreme court of Maryland, your honor, has decided that evidence given for one purpose, even with the consent of the party, if directed to another purpose afterwards may be availed of by the party, and the objection, the constitutional objection, may be accurate at that time.

The COURT. When that was first urged I understood it to be urged—I think perhaps it was urged—on the ground that that would be necessary in order to entitle the defendants to immunity given in the appropriation act?

Mr. MOODY. Yes.

The COURT. It is now agreed by counsel on both sides that whatever that act says it says independently of any particular act.

Mr. MOODY. It is the general law.

The COURT. It is the general law.

Mr. MOODY. And I will come to that any moment.

The COURT. Yes.

Mr. MOODY. So I think I may safely leave the proposition of the materiality of the delivery of any evidence to the Department of Justice to what I have already said about it.

The COURT. Anyway, General Moody, upon what argument do you base your statement that the duty of the Commissioner of Corporations looked only to the study of the lawful operations of the law? Might not Congress have intended and does not this act show that Congress did intend to discover through this Department evasions of the law, violations of the law, whether a creature of the law was living above the law, outside of the law, and if that be so might Congress not have had in mind the notion of punishing anybody who was not entitled to immunity by reason of the investigation?

Mr. MOODY. I will answer your honor's question as I understand it. I base my conclusion that the purpose of the creation of the Bureau of Corporations was the study of the lawful operations of corporations, and that any investigation of unlawful conditions would be incidental, upon a study of the act creating that Bureau and a comparison of its provisions with the law relating to the Department of Justice, which was passed, I believe, thirteen or fourteen days afterwards, and was being considered by Congress at the same time. Of course there can be no demonstration about it. Congress has not limited the Bureau of Corporations to a study of the lawful operations of corporations; it has not limited the Department of Justice to the study of unlawful operations of corporations, but——

The COURT. Well, doesn't the decision of the Hale case, if it be accepted that the corporation is not immune, can not be immune—if that is the effect of the Hale case, did not Congress have the double purpose?

Mr. MOODY. It is possible that they might have had the double purpose in view of that decision, but I think the primary purpose—I think it appears fairly from this act that the primary purpose was the study of the lawful operations of corporations, with the view of solving, among other questions, those which I presented to your honor as appropriate for the study of that Bureau. Now, I can say very briefly all that I have to say upon that, and that is this: The Commissioner is directed to make "diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company, or corporate combination engaged in 'foreign or interstate commerce,' and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce."

The purpose was to investigate the organization, conduct, and management of the corporations in order to furnish information and data to the President so that he could recommend remedial legislation to Congress.

The COURT. That is clearly the primary purpose.

Mr. MOODY. Yes; that is clearly the primary purpose.

The COURT. Yes.

Mr. MOODY. And that is perhaps all I would say. That there might be incidentally criminal conduct developed in the study of corporations I would not for a moment deny. But now, a few days afterwards, Congress had, as a primary purpose, the study of the unlawful operations of corporations. So in the act passed February 23, 1903, two things were done. First—or, rather, three things were done. First, the very unusual step was taken of appropriating $500,000 to be expended in the absolute discretion of the Attorney-General. It authorized the Attorney-General to employ special counsel and agents of the Department of Justice to conduct suits, proceedings, or prosecutions under the so-called "Sherman Act" and the so-called "Wilson Act," and for the purpose of showing that those prosecutions were intended to be earnest, for the first time, power to compel testimony was given. Up to that time, as Mr. Rosenthal pointed out very well, it was the Interstate Commerce Commission alone that had the power to compel testimony. So I say, and perhaps it is all that can be said, and your honor has expressed it, that the primary purpose of the Bureau of Corporations was to study the lawful operations of corporations, and only incidentally did that Bureau come to study any unlawful operations.

Mr. MILLER. How about the Martin resolution?

Mr. MOODY. The Martin resolution was broader than that. The Martin resolution, passed by one House of Congress, did specifically direct the Bureau of Corporations to inquire, in the words of that resolution—I don't remember them now—whether a combination existed which had affected prices.

The COURT. That made its duty imperative.

Mr. MOODY. I think it did. I think I must concede that it did. But I am studying now a proper construction of the statute from its own terms, and having no light upon it from any investigation that was ordered years afterwards.

The COURT. Yes.

Mr. MOODY. It is, however, said that the delivery of such evidence as has been obtained to the Department of Justice brought the transaction within the terms of the act of February 25, 1903, to which I have just referred. There are two or three answers to this. Each one of them, I submit, is conclusive.

First, the testimony taken by Garfield, or, to be more accurate, the information taken by Garfield was not and could not have been taken under the act of 1903, because that act extends the immunity only to a proceeding, suit, or prosecution under certain acts, of which the Sherman Act is one. Clearly, by any use of the words "prosecution" or "suit," Garfield's investigation did not come within those two terms.

The COURT. No; but what about this indictment?

Mr. MOODY. This indictment?

The COURT. This indictment is under the Sherman Act?

Mr. MOODY. Oh, yes; this is a prosecution under the Sherman Act—undoubtedly a prosecution under the Sherman Act; but the investigation proceeded. The investigation had nothing whatever to do with the prosecution; and it is not urged that Garfield had anything to do with the prosecution, and the other day in discussing this my friend Rosenthal said that he could not for a moment claim that Garfield had acted in a suit or a prosecution, but what he did claim was that Garfield's investigation was a proceeding, and therefore it might be under the act of 1903.

Mr. MILLER. Well, if Garfield, with the approval of the President, assisted the Department of Justice in getting evidence for use before a grand jury, or in the prosecution of the indictment, then I should contend, and I think that counsel for all the defendants contend, that that became a production of evidence within the act of February 25, 1903.

The COURT. It has been contended here that one of the objects of Garfield's investigation, as shown by the evidence, was to bring on the indictment.

Mr. MOODY. Yes.

The COURT. As it did.

Mr. MOODY. Yes.

The COURT. As it came on.

Mr. MOODY. Yes.

The COURT. That Garfield made the investigation for the purpose of helping the Department of Justice to so present the matter to the grand jury as to indict the defendants, and that that actually happened.

Mr. MOODY. Now, in the first place, I invite contradiction if I am mistaken in saying that Mr. Rosenthal the other day said that clearly Garfield's proceedings could not be considered as a suit or prosecution, but rested upon the broader word "proceeding."

Mr. ROSENTHAL. I think I rested it upon a proceeding. I don't think I argued the other at all.

Mr. MOODY. I thought you made a concession about it.

Mr. ROSENTHAL. No.

Mr. MOODY. It perhaps does not make very much difference whether you call Garfield's investigation a proceeding or a suit or a prosecution, because if this was a proceeding under the Sherman Act, if the investigation was a proceeding under the Sherman Act, it is not necessary for us to consider whether it is a suit or a prosecution.

The COURT. Oh, no.

Mr. MOODY. Because proceeding, which is a much broader word, is enough, and I will only say, with respect to that, that I have found nowhere any definition or use of the word "proceeding" which did not include the idea that it was a step taken in some judicial process. A very exhaustive brief has been presented to me upon that question, with which I will not trouble your honor, because I think very clearly that a proceeding is a step in a judicial process, and that only in the loose use of language can Garfield's investigation be said to be a proceeding.

Mr. MILLER. But a grand jury investigation is?

Mr. MOODY. A grand jury investigation is.

The COURT. I think it might be said here now, as well as at any time, that within my judgment the facts do not show that in the beginning of this investigation Garfield was helping anybody or intended to help anybody. What effect had the giving of the information to the Department of Justice, when he was directed to do so by his superiors, is the only question in this case.

Mr. MOODY. I shall come to that in a moment.

The COURT. Yes.

Mr. MOODY. The next answer to this position is this: That the immunity act of 1903 is the same immunity act as that contained in the law of 1893. No one has pointed out any difference between the two acts.

The COURT. Just how does it read?

Mr. MOODY. In this way:

"*Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts."

Now, if anybody can point out to me now any material difference between the act of 1893 and the act of 1903 I would be very glad if he would do it. I can not see that there is a difference in a word, and the Supreme Court has said that the two laws were in almost exactly the same words.

Mr. MILLER. It says nothing about subpœna.

Mr. MOODY. No.

The COURT. Neither does the act of 1893.

Mr. MOODY. Neither does the other act say anything about subpœna.

The COURT. Neither does the act of 1893.

Mr. MOODY. Neither one.

Mr. MILLER. And there is nothing about an oath; it says nothing about an oath.

Mr. MOODY. Neither does the act of 1893.

The COURT. None of the three of them say anything about it.

Mr. MOODY. No; none of the three of them say anything about it. They are all alike in that respect, but of course in a suit, proceeding, or prosecution information which is given is always testimony, it is always evidence, and the courts which are conducting suits and proceedings and prosecutions have the power to subpœna without its being expressly conferred upon them in any law. The only significance in the provision for subpœna in the Cullom Act was that it conferred upon

the Commission the power which it would not have inherently, as the court has, to require by subpœna the attendance and testimony of witnesses and the production of documents; and its great importance there consists in the fact that it is at the very threshold of the immunity, at the exit of which lies the idea of prosecution for perjury, and that it characterizes the kind of information and statement out of which alone immunity can grow.

Mr. MILLER. In response to the Attorney-General's question about differences in the acts, I would like to suggest that under this act of February 25, 1903, it is very obvious—it being according to the entire terms of the act—that if a person should put into the hands of the United States attorney evidence which concerned the transaction, the criminal transaction, or one of these attorneys that are provided for there, special attorneys, to carry on those proceedings, that that would be the production of evidence within the immunity provision of that act.

The COURT. I understood you to argue that the use made of the information furnished in the Garfield report alone brought the case under that.

Mr. MILLER. Yes; I think so; but we did not rest our case on that by any means.

The COURT. No; but the Garfield report was used before the grand jury, and that the defendants furnished the parts of it which were used before the grand jury.

Mr. MILLER. Yes.

The COURT. Furnished it to Garfield?

Mr. MOODY. Yes.

The COURT. And that Garfield furnished it to the Department of Justice.

Mr. MOODY. The whole case of the defendants is based upon the theory that they acted in obedience to the compulsion which was conferred upon Garfield by the act creating his office. Their whole case depends upon the theory that he was investigating by virtue of the provisions of his act, and not by virtue of the provisions of any other act. If he obtained this information under the provisions of his own act it is governed by the rules of law which surround and restrict that act. It can have no other effect, because subsequently it may have been diverted from its proper uses and devoted to the consideration of the grand jury. I do not care the snap of my finger whether it be considered that this testimony was taken under the act creating the Bureau of Corporations, or whether it be considered that any part of it was taken under the act of 1903, because in either case it was taken by Garfield and the investigation was made by Garfield, and every condition and restriction which bounded his powers must be considered to be operative, whether he acted under the one act or the other act.

Mr. HYNES. And that he was acting as an agent of the Department of Justice also.

Mr. MOODY. That he was acting as an agent of the Department of Justice also?

Mr. HYNES. Yes.

Mr. MOODY. Garfield has been put to a good many uses in this case, but the theory that he was an agent of the Department of Justice appears a little late. I hardly think that I will argue it. If one thing is clear in this case above all others, it is that what Garfield did, he did not as a private citizen employed by the Department of Justice, but as Chief of the Bureau of Corporations, under the powers the law creating that Bureau conferred upon him. I care not whether he acted under the law of 1903 or the law of his own creation, because the provisions for immunity in the law of 1893 are exactly the same—they are exactly the provisions of the immunity laws of 1903, and whether he acted under the one law or whether he acted under the other law he is subject to the further restriction that he could impose no liability, he could confer no immunity unless upon those persons who were subpœnaed by him.

It is precisely, if your honor please, as if Congress recognizing the great extent of the investigation by Garfield and the numerous agents that he might employ, and the danger that he could impose liabilities upon citizens or offer them immunities—impose liabilities all over the country and scatter immunities all over the country—it is precisely as if foreseeing that condition, instead of saying that that could be done only in the case of persons subpœnaed, had said he shall not impose the liability to indictment upon any citizen, he shall not confer the immunity which the law confers upon any citizen, until he first files his name with the Secretary of Commerce and Labor. Some way had got to be found to restrict both the liabilities which might be imposed by Garfield and his subordinates and the immunities which might be conferred by them, and the way actually selected was the natural way—to say that those obligations and requirements and liabilities should be imposed only upon, and those immunities should be conferred only upon, such citizens as he should select and serve with the process of subpœna. Your honor will therefore observe that the subpœna in the Bureau of Corporations act has a very different purpose and function from the subpœna which the Interstate Commerce Commission is entitled to issue.

I do not know what evidence it is claimed that Mr. Garfield did deliver to the Department of Justice. I only know what I have heard here. I have heard it said—and it is clearly true, of course—that Mr. Garfield handed to Mr. Fagin some tables showing, I think, the proportion of slaughtering between the different packing houses, and showing that those proportions had continued constant, and the claim might fairly be made that that could not come about by accident, that it must have been the result of design, that it must have been the result of the design that the business of the country should be unlawfully divided between these different concerns. I understand that that information was obtained from two sources, each confirmatory of the other. One was the books of these packers and the other was the records of the Bureau of Animal Industry. Whether it is claimed that any other evidence was delivered to the Department of Justice, I do not know. I suppose it to be true that the Garfield report, which was a public document and which was circulated all over the country, was available for the use of the district attorney. Whether he used it or not, I do not know.

It is said here in this case that the President wrote a letter which has some bearing upon this question. I would be the last man who would restrict counsel in the performance of their duty to their clients. If they felt it their duty to introduce that letter, written upon another subject, against the man in the White House, who is as helpless to come here and explain it as if he were a child who had not learned the letters of the alphabet—if they felt it to be their duty to make that attack upon a man who is powerless to meet it, then I have nothing to say. In a sense it was true that there was some assistance. Just as there poured in the complaints from the suffering people of this country to the Attorney-General they poured in, according to this evidence, upon the Chief of the Bureau of Corporations, and he has told your honor that by direction of the President he turned those names over to the Department of Justice for investigation. We take the responsibility for it and bear all the consequences that come from it.

Mr. MILLER. In justice, perhaps, to ourselves I should like to have the distinguished Attorney-General state how the introduction or the putting in evidence of the letter of the President, which was itself a public document, made so by the Attorney-General, constitute any attack upon the President of the United States?

Mr. MOODY. I leave what I have said without a word of qualification. It is claimed here, if your honor please, that Mr. Garfield waived the oath. It is not seriously claimed that this statute by its fair interpretation had regard to anything except sworn testimony and sworn evidence, but it is claimed that in some manner Garfield had waived the production of the oath, and therefore that which was not testimony could be regarded as such. I do not understand this claim. Garfield could waive nothing. The principle of waiver is as foreign to this discussion as the rule in Shelley's case or any other equally irrelevant principle of law. Garfield had the widest discretion, as my brother Miller has said here, as to the number of agents that he should employ, the number of persons from whom he should obtain information, the number of books which he should examine. But he could not by any act of his determine what persons should have the immunity granted to them by the terms of a statute. The statute gives immunity only in the case of testimonial compulsion by legal process to a witness who makes oath to his statement. Garfield has no right to vary that law by a hair's breadth. Suppose Congress had said, "be it enacted that if any witness is called and testifies upon oath, or gives sworn evidence relative to any offense with which he is charged, or may be charged, he shall have immunity." Would my friends contend that Mr. Garfield could waive the provisions of that act and say and do anything whatever that would bring a person within the immunity who by the terms of the law was outside of it? And yet, that act is in substance and effect what this immunity act is, and there is nobody in this argument who has disputed it. Mr. Garfield could no more extend the benefits of immunity, could no more admit a citizen to the benefits of immunity which was confined within clearly defined limits by Congress itself, than his chief, the Secretary of the Department of Commerce and Labor, could admit to this country an alien who is excluded by its laws. He could no more extend the benefits of immunity beyond the terms of the laws than the Postmaster-General could allow me or any other citizen to transport in the mails mail matter at any other than the compensation prescribed by law.

The question is not what Mr. Garfield did, but what these persons who are claiming immunity did. If they did the things which by the law they were bound to do in order to get immunity, then they have it. If they failed to do those things, then they have failed at their own peril, as the common-law witness who testified without making his claim of privilege testified at his own peril.

The authority, may it please your honor, of Government officials is confined rigidly within the law which creates their offices. They can no more travel out of the course marked out for them by the law-making body than a planet can escape from its orbit. They are unlike private agents, who may sometimes bind the principals, where their authority is not broad enough to do that thing. There have been presented to your honor very many cases showing the difference between Government officials and private agents. I shall not refer to them. I say that Mr. Garfield had no power to vary the extent of that law one hair's breadth or to bring any man within its benefits who was not brought within its benefits by the will of Congress itself. I dismiss almost with a word the claim that Mr. Garfield promised immunity. Whether there is any evidence of such a promise or not I do not know and I do not care.

Mr. MILLER. There is no claim of it.

Mr. MOODY. Then I was mistaken, and I will not even say that word.

Mr. HYNES. Except the statement that they were protected by the act.

Mr. MOODY. And that is a statement of his opinion of the law, and we have been arguing something over a week as to what the law means; so I do not think I will undertake to refute it.

The Supreme Court has held, if your honor please, in the Hale case, first, that corporations are not within the immunity act; and, second, which is the only thing I desire to dwell upon, that they are not entitled to the protection of the fifth amendment to the Constitution, which that statute supplants. It follows that Mr. Garfield had a right to the inspection of all these books and documents which are said to have conferred immunity on these defendants.

The COURT. Now, that leads me to the question I would like you to consider. Do you regard it as one of the purposes of this act, conceding that the primary purpose was the legislative purpose, do you regard it as a secondary purpose of the act to get evidence of violations and evasions of the law to be used against the corporation; and if so, how far can the department, over which he presided, use the individuals who are connected with the corporations to furnish information against the corporation without giving immunity.

Mr. MOODY. Just as far, if your honor please, as those individuals chose to go. Just as at common law, the Government had a right to obtain any information which a person chose to disclose. If he chose to claim his privilege, he was exempt from the disclosure of anything that tended to incriminate him. If he should avail himself of the substitute for his privilege under the Constitution by following the pathway accurately marked out for him by the statute of immunity, he gets his immunity. If he does not choose to do that, he does not get his immunity, and he ought not to get his immunity.

The presumption is that men are honest. What do I care about the fifth amendment to the Constitution of the United States, and what does your honor care? Neither of us have anything that we wish to conceal. If we abandoned the path of rectitude, if we strayed beyond it, and began to violate the laws of the land, and we wished to get immunity from punishment for that violation, it is no hardship upon us that we should follow the pathway marked out by the statute; a pathway no more narrow, no more difficult to travel than the pathway marked out for the same evildoer by the Constitution of the United States.

I agree that if Mr. Garfield, in the manner provided by the law giving immunity, had obtained from any one of these defendants the books of the corporation, and those books contained anything relevant in the broadest sense to the offense with which they were charged, that would give them the immunity. I do not agree that the officers of these corporations, allowing him to do the thing which the law of the land gave him the right to do—to inspect their books—have obtained any special favor or immunity because they have allowed it. If they had warned the Government that they were misdoers, if they had

warned the Government that it was traveling upon ground which they were privileged to hold sacred, then they would be entitled to all the privileges coming from the Constitution and to every immunity flowing from the immunity act which supplants the constitutional privilege. But they did none of these things.

Mr. HYNES. General, will you allow me——

Mr. MOODY. There has been nothing obtained from these defendants which, under the law of the land, to-morrow, without incriminating one of them, the authorities representing the Government of the United States could not obtain.

Mr. HYNES. May I ask this question, General? Does the learned Attorney-General forget that the very question that was put to them by Mr. Garfield was whether they were engaged in an unlawful combination or conspiracy, and that he announced to them that is what he was trying to find out?

Mr. MOODY. I do not forget it. I do not care. He put them on their guard. They were not entrapped into anything. There is no question of a net being set for them. I welcome the suggestion which my learned friend has given me. It takes out of this case any lack of general equity. Because they were given warning, on the very threshold of the investigation, that it might extend into the criminal field. Had the Government not done its duty? Was it not their duty, then, to see, if they claimed immunity, that they took steps to get it? Why, my friend has reminded me that the Government did more than it was required to do to supplant the common-law privilege. The common-law witness who was put upon the stand was asked the question which might incriminate him. No warning was given. Ignorant or learned, advised or unadvised, he was bound to claim his privilege at his peril. The Government did more than that. It acted as if it had said to the witness on the stand, "You are about to be asked questions which may relate to an offense with which you are charged." You have been advised by counsel better than whom the land can not afford. Hasn't the Government done its duty? If the defendants then did not seek the shelter of immunity, if they did not then seek the shelter that no honest, law-abiding citizen ever requires, the fault is their own, the peril is their own, and the consequences may fall upon their own heads.

Now, if your honor please, I have discussed this case in a manner such as my feeble powers would permit me. I have spoken with deep earnestness. I have spoken under a sense of profound responsibility to your honor, as well as to the people of this country. My judgment of the law, my opinion, is not important to your honor. It is important to me that I should say to your honr that I have given it, in all parts of this case, as it lies in my own mind. It is our claim that by the common law, crystallized into the fifth amendment of the Constitution of the United States, the citizen, when he became a witness, was privileged not to answer any question which might incriminate him. He was protected against testimonial compulsion, compulsion to testify as a witness.

The Congress has supplanted that constitutional privilege by a substitute, and it is our claim that, though in some respects that substitute is broader than the privilege, in the vital respect that it pertains to the citizen when he becomes a witness upon the stand and under his oath, it is the same. And that no one under the laws of this land can obtain immunity unless he brings himself within the provisions of that statute. My distinguished friends can bring no decision and no dictum and no practice anywhere, from one end of this land to the other, in support of their contention. In support of ours we bring the decision of the highest court of one of our States.

And we claim, further, that these defendants who gave this information were not only under the restrictions in obtaining the immunity that were written in the act of 1893—immunity limited to the testimonial field alone, bounded, as I said this morning, upon one side by the fence of subpœna and upon the other side by the fence of perjury—but also, owing to the peculiar constitution of the Bureau of Corporations, under the further limitation that immunity can be conferred, and the liabilities can be imposed only upon persons who have been served with the subpœna of the Commissioner of Corporations.

If I am right in either of these contentions, the Government is entitled to a verdict as a matter of law. I can not conceive how your honor can be in doubt upon these questions. Yet, if there should exist anywhere, upon any part of this case, the faintest shadow of a doubt in your honor's mind, I implore your honor to remember that an erroneous decision or ruling against any of these defendants may be corrected. Their rights can not be taken away from them except by the judgment of that exalted tribunal at Washington, in whose keeping the people believe that the rights of the Government and of the individual alike are safe. There this question can receive that long deliberation, that comparison of differing views, which is denied to this or any other court sitting as this court does for the trial of a case at bar. On the other hand, an erroneous decision upon this case against the Government is irretrievable. It is an irreparable misfortune. It disposes not only of this great case, but it will dispose of others as great. It was the consideration to which I now allude which persuaded the great judge who sat here in the Counselman case, against his own inclinations and tendencies, to rule upon that case so as to best promote its transmission to the Supreme Court of the United States. Think of the benefits that have flowed from that decision. That began this great social and economic movement which is in the mind and the hearts of the people to-day.

If, upon this case, resting fundamentally as it does upon the propositions that "subpœna" does not mean subpœna, that "witness" does not mean witness, that "testimony" does not mean testimony, that "evidence" does not mean evidence, or that in some mysterious way, by some occult power never before recognized by the law of the land, some one has warped or distorted those words from the meaning which belongs to them; if, I say, upon this case, resting upon those propositions, these defendants escape the inquiry into the truth of the charges made against them, it will be a calamity to the Government, to the people, to the laws, to the administration of the laws, and, above all, to these defendants themselves. Above all, to these defendants themselves. In season and out of season, publicly and privately, I have claimed for them and urged for them the presumption of innocence which is their right. I recognize as well as any man the great and enduring service which the genius they and their forbears brought to the organization of this great business has done to the people of this country; benefits that can not be exaggerated, that ought not to be forgotten. No one is more ready to concede those things than I am. But they are charged with a violation of the laws of the land; and if they escape the inquiry into the truth of that charge the calamity to them will be greater than it is to any other living men. It is better not only that they should be tried and acquitted, but that they should be tried, convicted, and suffer the penalties of the law than that they should escape; than that they should be dismissed and go hence without day, upon pretenses so flimsey as those by which they seek deliverance at your honor's hands.

It is a question of law, your honor. According as you rule, one way or the other, this case must go. You, alone of all the judges of the land, of all the 80,000,000 of our people, have the solution of this question; and I leave it, with confidence, in your honor's hands.

The constitutional provision and the principal parts of the statutes relating to immunity under discussion in this case.

THE FIFTH AMENDMENT TO THE CONSTITUTION.

No person * * * shall be compelled in any criminal case to be a witness against himself.

PART OF SECTION 12 OF THE INTERSTATE-COMMERCE ACT.

SEC. 12. (As amended March 2, 1889, and February 10, 1891.) That the Commission hereby created shall have authority to inquire into the management of the business of all common carriers subject to the provisions of this act, and shall keep itself informed as to the manner and method in which the same is conducted, and shall have the right to obtain from such common carriers full and complete information necessary to enable the Commission to perform the duties and carry out the objects for which it was created; and the Commission is hereby authorized and required to execute and enforce the provisions of this act; and, upon the request of the Commission, it shall be the duty of any district attorney of the United States to whom the Commission may apply to institute in the proper court and to prosecute under the direction of the Attorney-General of the United States all necessary proceedings for the enforcement of the provisions of this act and for the punishment of all violations thereof, and the costs and expenses of such prosecution shall be paid out of the appropriation for the expenses of the courts of the United States; and for the purposes of this act the Commission shall have power to require, by subpœna, the attendance and testimony of witnesses and the production of all books, papers, tariffs, contracts, agreements, and documents relating to any matter under investigation.

Such attendance of witnesses, and the production of such documentary evidence, may be required from any place in the United States, at any designated place of hearing. And in case of disobedience to a subpœna the Commission, or any party to a proceeding before the Commission, may invoke the aid of any court of the United States in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section.

And any of the circuit courts of the United States within the jurisdiction of which such inquiry is carried on may, in case of contumacy or refusal to obey a subpœna issued to any common carrier subject to the provisions of this act, or other person, issue an order requiring such common carrier or other person to appear before said Commission (and produce books and papers if so ordered) and give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying; but such evidence or testimony shall not be used against such person on the trial of any criminal proceeding.

The testimony of any witness may be taken, at the instance of a party in any proceeding or investigation depending before the Commission, by deposition, at any time after a cause or proceeding is at issue on petition and answer. The Commission may also order testimony to be taken by deposition in any proceeding or investigation pending before it at any stage of such proceeding or investigation. Such depositions may be taken before any judge of any court of the United States, or any commissioner of a circuit, or any clerk of a district or circuit court, or any chancellor, justice, or judge of a supreme or superior court, mayor or chief magistrate of a city, judge of a county court or court of common pleas of any of the United States, or any notary public, not being of counsel or attorney to either of the parties, nor interested in the event of the proceeding or investigation. Reasonable notice must first be given in writing by the party, or his attorney, proposing to take such deposition to the opposite party, or his attorney of record, as either may be nearest, which notice shall state the name of the witness and the time and place of the taking of his deposition. Any person may be compelled to appear and depose, and to produce documentary evidence, in the same manner as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission as hereinbefore provided.

ACT OF FEBRUARY 11, 1893.

An act in relation to testimony before the Interstate Commerce Commission and in cases or proceedings under or connected with an act entitled "An act to regulate commerce," approved February 4, 1887, and amendments thereto.

Be it enacted, etc., That no person shall be excused from attending and testifying or from producing books, papers, tariffs, contracts, agreements, and documents before the Interstate Commerce Commission, or in obedience to the subpœna of the Commission, whether such subpœna be signed or issued by one or more Commissioners, or in any cause or proceeding, criminal or otherwise, based upon or growing out of any alleged violation of the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, or of any amendment thereof on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said Commission, or in obedience to its subpœna, or the subpœna of either of them, or in any such case or proceeding: *Provided*, That no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

Any person who shall neglect or refuse to attend and testify, or to answer any lawful inquiry, or to produce books, papers, tariffs, contracts, agreements, and documents, if in his power to do so, in obedience to the subpœna or lawful requirement of the Commission shall be guilty of an offense and upon conviction thereof by a court of competent jurisdiction shall be punished by fine not less than $100 nor more than $5,000, or by imprisonment for not more than one year, or by both such fine and imprisonment.

Public No. 54, approved February 11, 1893.

SECTION 6 OF THE ACT ESTABLISHING THE DEPARTMENT OF COMMERCE AND LABOR.

[32 Stat., 825, 827.]

An act to establish the Department of Commerce and Labor.

* * * * * * *

SEC. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations who shall be the head of said Bureau, to be appointed by the President, who shall receive a salary of $5,000 per annum. There shall also be in said Bureau a Deputy Commissioner, who shall receive a salary of $3,500 per annum, and who shall in the absence of the Commissioner act as, and perform the duties of, the Commissioner of Corporations, and who shall also perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said Commissioner. There shall also be in the said Bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company, or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers subject to "An act to regulate commerce," approved February 4, 1887, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained, or so much thereof as the President may direct, shall be made public.

In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies, and combinations subject to the provisions hereof as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce" and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpœna and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said "Act to regulate commerce" and by "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February 11, 1893, supplemental to said "Act to regulate commerce," shall also apply to all persons who may be subpœnaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

ACT OF FEBRUARY 25, 1903.

[32 Stat., 854, 903.]

An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June 30, 1904, and for other purposes.

* * * * * * *

That for the enforcement of the provisions of the act entitled "An act to regulate commerce," approved February 4, 1887, and all acts amendatory thereof or supplemental thereto, and of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and all acts amendatory thereof or supplemental thereto, and sections 73, 74, 75, and 76 of the act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," approved August 27, 1894, the sum of $500,000, to be immediately available, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney-General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said acts in the courts of the United States: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

* * * * * * *

Approved, February 14, 1903.

Opinion by Judge Humphrey, March 21, 1906.

Judge Humphrey said:

"Gentlemen, unless I should take the time to write out my views on these motions I am as well prepared to give them now orally as I will be later, and I do not feel like causing the delay necessary to a written opinion.

"A number of acts of Congress are involved and have been discussed upon the arguments on the motion and cross motion to direct a verdict: The Cullom Act, the original interstate-commerce act, passed in 1887, and the acts with regard to testimony, supplemental thereto, in 1893; the act of February, 1893, establishing the Department of Commerce and Labor, and by its terms adopting certain portions of the first two named acts; the Sherman Act of 1890, and the appropriation act of February 25, 1903.

"The discussion has been so elaborate, and has been conducted with such ability and research, and so leisurely, I may say, in its presentation, that the court has been able practically to keep up each day with the review of such authorities quoted as the court regarded of such importance as to require a review. And I want to thank counsel, and I can do them no higher compliment than to say that so far as my research has gone the profession has furnished nothing in addition to what counsel have presented.

"The defendants are indicted under the Sherman Act, the antitrust act, charged with a conspiracy in restraint of trade. They have pleaded that as to them that act is suspended and inoperative and does not exist, because they were compelled to furnish evidence of and concerning matters contained in the indictment, and that under the law such furnishing of evidence gives them immunity.

"There is a provision in the commerce and labor act providing for immunity, and refers for the immunity to the Cullom Act and the act supplemental thereto.

"The commerce and labor act reads:

"'That all the requirements, obligations, liabilities, and immunities imposed or conferred by said' Cullom Act—I read in instead of a long description of the act—'and by said supplemental act shall also apply to all persons who may be subpœnaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.'

"The act supplemental to the Cullom Act contains an immunity clause in the following words:

"'But no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, before said Commission or in obedience to its subpœna or the subpœna of either of them, or in any such case or proceeding.'

"And the act of February 25, 1903, contains an immunity clause slightly more liberal than either of these.

"The law under consideration, for the construction of which the court is called upon here is the commerce and labor act, adopting as it does certain portions of the other two.

"It is necessary to look into the purposes of Congress in passing that act in order that the court may determine what construction will best carry out the legislative intent, because it is the duty of the court in construing an act of Congress to give it such construction as will carry out the legislative purpose expressed in the act itself. It is clear to my mind that the primary purpose of the commerce and labor act was to enable Congress, through the channels of the officers charged with the execution of that law, to pass remedial legislation. It may have had a secondary purpose. I regard this as the primary purpose, the chief purpose, the legislative purpose. It is clear from the act itself that if there be a secondary purpose, the primary purpose, the legislative purpose was vastly more important in the mind of Congress than any other. Congress wanted to know how the laws were operating, laws with regard to corporations, how they were being evaded, how to strengthen them in case they needed strengthening, and what further legislation was necessary. In my judgment the purpose of every one of these laws, the high aim of Congress in passing each one of these laws, was a determined purpose that the creature of the law should not be allowed to grow beyond the law.

"This last effort, this commerce and labor act, is the repeated attempt of Congress to bring to its aid such information as would enable it to do whatever might be necessary for the control of artificial bodies created by law.

"Perhaps a secondary purpose was the punishment of offenders. It is perfectly clear to my mind that that was not the main purpose, because there were abundant laws already on the statute books for that, and a great department skilled in the work of punishing offenders. And still I am not able to say but what a primary purpose of the commerce and labor act might have been the punishment of offenders. I say this because it is not inconsistent with the act or with the other purpose that that should be so, so far as the corporation itself is concerned, as is made pretty clear to my mind by the late decision in the Hale case.

"If the statute is to be so construed as to carry out the legislative purpose, the legislative intent, how can that best be done? The statute itself surrounds the Commissioner with no forms, puts no legislative limits upon his methods, gives him unusual latitude as to methods. It does not require public hearings. I am of opinion that the act contemplated that he should proceed by private hearings, because it provides in express terms that the President shall decide how much of his investigation shall become public. If the Commissioner should have public hearings, the President would never have a chance to do the part, to perform the work, which the act assigns to him. I therefore conclude that the legislative mind intended that the Commissioner should proceed by private hearings.

"The act is a substitute for one of the most cherished rights of the American citizen, the right to remain silent when questioned upon any subject when the answer would incriminate him. It is conceded in argument that the privilege given by this amendment could not be taken from the citizen without giving him something equally broad and equally valuable. Congress had had the experience of having tried that. It had passed an act intended to take away the privilege and substitute an equivalent, and the Supreme Court had decided that the substituted thing was not an equivalent. I say it is conceded that in furnishing a substitute for this great right of the citizen Congress must give something as broad. It might be broader, but it could not be narrower. In my judgment the immunity law is broader than the privilege given by the fifth amendment, for which the act was intended as a substitute. The privilege of the amendment permits a refusal to answer. The act wipes out the offense about which the witness might have refused to answer. The privilege permits a refusal only as to incriminating evidence. The act gives immunity for evidence of or concerning the matter covered by the indictment, and the evidence need not be self-incriminating. The privilege must be personally claimed by the witness at the time. The immunity flows to the witness by action of law and without any claim on his part.

"I am of opinion that under this act when the Commissioner of Corporations, who has power to compel, makes his demand, it is the duty of the witness to obey. The act calls upon the citizen to answer any legal requirement of the Commissioner. The citizen may be punished for a refusal to answer such legal requirement.

"Contention has been made here that in order to get immunity the citizen should wait until the compulsion becomes irresistible. That is the effect of it. I am not able to bring my mind to accept that doctrine. If I am right in saying that immunity flows from the law without any claim on the part of the defendant, and at different times that has been conceded here in argument, then no act of any kind on his part which amounts to setting up the claim of immunity is demanded by the law. The law never puts a premium on contumacy. A person does not become a favored citizen by resistance to a legal requirement. On the contrary, the policy of the law favors the willing giving of evidence whenever an officer entitled to make a demand makes it upon a citizen who has no right to refuse. And it would be absurd and un-American to favor the citizen who resists and places obstacles in the way of the Government, as against the citizen who, with a full knowledge of the law, obeys without resistance the demand of an officer who has a legal right to make the demand for something which the citizen has no legal right to refuse.

"That brings us to this proposition, perhaps, that when an officer who has a legal right to make a demand makes such demand upon a citizen who has no legal right to refuse, and that citizen answers under such conditions, he answers under compulsion of the law.

"Is that the situation here? Was there compulsion in this case or were the defendants volunteers? There is so little dispute here about the facts that perhaps it is not necessary to discuss them at all. I am of opinion that the conference between Mr. Garfield, Mr. Krauthoff, Mr. McRoberts, and Mr. Dawes is the important event which fixes the character—the condition under which this evidence was given. There is some little dispute. It may be said that Mr. Garfield is an interested witness, as a representative of the Government. It may be

said that Mr. McRoberts and Mr. Krauthoff, then being in the employ of the Armour Company and one of them being now a defendant, are interested witnesses; but there is little if any dispute, perhaps only on one subject, between Garfield and Dawes. It is only as to the fact that an oath was discussed. I believe they agree on every other proposition. Garfield says there was no discussion of the oath. Mr. Dawes agrees with Krauthoff and McRoberts that there was.

"I am not able to look at the evidence which was furnished in the case as being the voluntary production of these defendants.

"The character of such parts of it as I deem the most important is such that it absolutely dispels any thought of that kind from my mind. Reasoning naturally, reasoning upon the natural course which men in like condition would have taken, I am led to the conclusion that the defendants would have withheld that information if they could.

"It is contended that they were volunteers because they higgled with Garfield at times, debated, resisted, gave less than he asked, withheld some. The record does show that, but the fact remains that every approach was made by the Government. In no instance did the defendants go to Garfield offering anything. Garfield made his demands explicit, made them definite, and it does not, to my mind, destroy the character of compulsion under which they acted that the defendants, after having considered the law and after having made up their minds that they had no legal right to resist, still debated with the Commissioner in the hope of inducing him to minimize his demands and take something less than he had originally demanded. That in some instances was done.

"Garfield came to them; they did not go to him. He demanded in writing and through his accredited representatives, and I would not regard it as proper to hold him for any action of his representatives, the result of which did not flow straight to him through them from the defendants; but so far as such results did flow straight to him in answer to his demands, they were negotiations between him and the defendants on his legal demands, which they had no right to dispute or refuse to answer.

"He came to the defendants and presented them with the law. He held up before them his power as Commissioner. The defendants knew the law. They had been fully advised. They took further time after his first interview, and were advised further. They saw that the Martin resolution under the eighth section of the law made Garfield's duty imperative. After the passage of that resolution the defendants saw that Garfield was compelled to act, compelled to demand, and they were compelled to answer.

"I regard Garfield as having been under the strictest legal compulsion by the terms of the Martin resolution. Oh, but it may be said, he could have gone somewhere else and gotten his information. The record shows that he himself said that he could not; that he could not make the investigation imposed upon him as a legal duty by the Martin resolution and the eighth section of the law without getting it from these people. And the investigation does disclose that they are the authors of nearly one-half of all the business in their line in the whole country. So that, I think, he was compelled to demand from them as well as they were compelled to answer under this statute.

"Now, if the defendants volunteered nothing, but gave only what was demanded by an officer, who had the right to make the demand, and gave in good faith, under a sense of legal compulsion, I am of opinion that they were entitled to immunity under the act.

"But it is insisted by the Government that they did not give under compulsion because they did not give what is known in law as under testamentary compulsion—that they did not give under what is known in law as testamentary compulsion, and it is argued that testamentary compulsion means compulsion furnished by the subpœna and oath.

"I can add nothing to what has been adduced by way of argument here on those subjects. I am clearly of opinion that the best judgment to be had from all the authorities is that the subpœna is a useless and superficial thing after the parties are together.

"And I am also of opinion that under any one of these three acts in question—these three immunity laws in question—the production of books and papers would be legal evidence without the oath of any person where they are adduced as showing admissions against interest and against the party producing them.

"Upon authority in the Bramm and Boyd cases the oath is not essential, and upon reason this must be so. Books and documents prove themselves when produced for the purpose of showing admissions against interest. They are receivable as evidence in all courts against the parties producing them. The purpose of the oath was to secure the truth; that is always the purpose of the oath; that is the only purpose of the oath; and to be certain that we get the truth the court always starts out by putting the witness under oath. But the Garfield act, the act under which Garfield was clothed with power, did not require him to put anybody under oath. It required him to make investigation. He might make it according to legal forms or not. He might use any kind of evidence that he chose if it was suitable to his purpose. The evidence that he procured from these defendants, so far as it consisted of books and documents, was, however, legal evidence, and would be considered legal evidence in a court of law, and under any one of these acts the production of the books and papers was a complete compliance with the law providing for the production of evidence, documentary or otherwise.

"It is not strange that Garfield was satisfied not to swear the defendants, although he started out with that intention. He distinctly told them so, and his forms show that fact. He expected to put them on oath if he regarded it as necessary, if he had any doubt about the truthfulness of the evidence. He had access to the books of original entry. He was satisfied of that fact; his agents were satisfied of that fact. The record shows that over and over again by repeated answers, and there was not the slightest reason for putting anybody under oath so far as those books and documents were concerned, and the oath of no one would have made that evidence any stronger or any better than it is now without the oath.

"Now, gentlemen, I don't know that I can add anything to this brief discussion of this case that I have made thus orally. You may bring the jury, Mr. Bailiff.

"I ought to say, what I have omitted to say, and which you gentlemen may think I have passed over without considering it, that I regard the Hale case as settling the question of the liability of the corporation."

(The jury was here returned to jury box.)

The COURT. Gentlemen of the jury, under the law of this case the pleas, the immunity pleas, filed by the defendants will be sustained as to the individual defendants, the natural persons, and denied as to the corporations, the artificial persons, and your verdict will be in favor of the defendants as to the individuals and in favor of the Government as to the corporations.

The clerk will put the verdict in form, gentlemen. And before discharging you I wish to say that your services are none the less appreciated because of the fact that the case has gone off wholly upon questions of law. Perhaps it is no surprise to you, as you heard early in the consideration of the matter many discussions of that fact, from long delays taken by the court for the purpose of allowing counsel to make their pleadings in such a way as to have no occasion for the use of the jury.

I have further to thank you gentlemen for your patience, continued endurance of the necessary embarrassments which must come to a juror caught up and kept up for so long a time as you gentlemen have been during this trial. It is one of the burdens which comes to every citizen in any way clothed with public duties. He has to suffer some personal embarrassments.

I wish for your safe journeys to your homes and pleasant meetings with your families. You will now be discharged from further service in the case.

Mr. MORRISON. Before they are discharged perhaps we should make our exceptions.

The COURT. Before they are discharged?

Mr. MORRISON. I presume so.

Mr. ROSENTHAL. Is it the form to have one juror sign the verdict?

The COURT. Oh, that is not at all necessary.

Mr. MORRISON. The Government excepts to that portion of the instruction directing a verdict on the issues as to the individual defendants, and requests the court to instruct the jury that the individual defendants are not entitled to immunity.

Mr. HYNES. And we for each and every of the defendant corporations——

The COURT. And the court, having considered the exception of counsel for the Government, overrules and denies the same, and declines to instruct the jury further.

Mr. MORRISON. Exception.

The COURT. And exception.

(To which ruling of the court, in so overruling and denying the motion of counsel for the Government, the Government then and there by its counsel duly excepted.)

The COURT. Now?

Mr. HYNES. And we, for each and every of the defendant corporations, your honor, move that the court instruct the jury to find the issues in favor of each and every of the defendant corporations.

Mr. BROWN. And we save an exception to the court overruling it.

Mr. HYNES. Yes; and we ask for that instruction now, your honor.

The COURT. And the court considers the exception taken on behalf of counsel for each and every of the defendant corporations, and overrules the same, and declines to instruct the jury further.

Mr. HYNES. Exception.

The COURT. Yes.

(Exception by counsel for the defendant corporations.)

The COURT. Gentlemen, you will be discharged from further service in the case.

Mr. MORRISON. Now, I assume that we make motions for appeal?

The COURT. Yes.

Mr. MORRISON. I assume we may take the necessary steps for appeal?

The COURT. Oh, certainly.

Mr. MORRISON. If we are entitled to it.

The COURT. I hope you will have, because it is a mighty important matter. I don't think I would have any right to find any other way, in view of my absolute settled judgment and decision, simply for the purpose of appeal.

POST-OFFICE APPROPRIATION BILL.

Mr. OVERSTREET. Mr. Speaker, I move that the House resolve itself into Committee of the Whole House on the state of the Union for the consideration of the Post-Office appropriation bill.

The motion was agreed to.

The House accordingly resolved itself into Committee of the Whole House on the state of the Union.

The SPEAKER. The gentleman from Kansas [Mr. MURDOCK] will take the chair temporarily, until the gentleman from New York [Mr. SHERMAN] comes into the Hall.

The CHAIRMAN. The House is in Committee of the Whole House on the state of the Union for the further consideration of the bill H. R. 16953, the post-office appropriation bill.

Mr. MOON of Tennessee. Mr. Chairman, it is only for a short time that I desire the attention of the House on the pending bill, carrying over $191,000,000 for the postal service. It has been very thoroughly and ably discussed in its details by the chairman of the committee [Mr. OVERSTREET]. It is not necessary for those who disagree with the majority of the committee on many of the questions involved in this bill to discuss any portion of the measure except the disagreeing items. It is impossible for the House of Representatives on an appropriation bill to give that relief by way of legislation to the country to which it is entitled owing to the existence of a rule of the House that prohibits legislation of a new character upon an appropriation bill. There are many questions that ought to be discussed fully and completely. It is impossible for them to be presented in debate to this House, except upon a general appropriation bill, although it may not be competent under the rules to legislate upon the identical question involved in debate, for the reason that separate bills upon those questions have not had or may not have a hearing before the committee as now organized.

One of the most important questions, in my judgment, for the consideration of this House is the question of railway mail pay. From year to year there is an increase in the pay demanded by the railroad companies of the United States for the transportation of mails. Gradually there is an increase in appropriations. It must be conceded that the growing busi-

ness of the country and the population of the country contribute largely to this demand and its accession on the part of Congress to the railroad companies of the United States. But this committee has never had the information; it has not now the information; the Government of the United States has not the information, and no man within the sound of my voice has information upon which to act intelligently and pass an opinion as to what the proper and just pay ought to be to the railroad companies for the transportation of mails. I venture the assertion that there is not a member of the Committee on the Post-Office and Post-Roads of the House or in the Senate who can come within $10,000,000 to-day from any proper basis of calculation as to what legitimately ought to be paid to the railroad companies of the United States for this service. Whatever information we get comes from the Department that supervises the execution of the statutory contract and whose official conduct is ever under review. It is, at best, a source of information that ought not to be entirely relied upon; but it is the only means, the only source of information, that we have, practically, except as we may draw legitimate inferences from those facts that are conceded.

Therefore this committee, instead of being able to present to the people of the United States an intelligent reason for the appropriation of $43,000,000 of money for the transportation of mails, are forced to present themselves to the House and to the country in the simple attitude of clerks recording the decree and the judgment of the Post-Office Department.

This question has been investigated, partially at least, by a commission, but no satisfactory conclusion was reached. The weight of the mail is ascertained quadrennially. The United States is divided into four sections, and the mail is weighed in each section once in four years, the weighing period covering about three months. An estimate for the whole period is made on this basis of calculation; the money is then paid at the rate fixed by the statute. That this is an unwise, inaccurate, unsatisfactory method all must concede. That it is open to fraud all must know.

I desire to present the views of the railroad companies upon this question and the views of those who oppose the continued payment of the large sums of money to the railroad companies for the transportation of the mails. We must consider and give just consideration to all conflicting statements of the interested parties and circumstances to determine the question, if we can, because we have no direct or positive disinterested evidence upon which we can legitimately and honestly reach a conclusion.

No direct contract is made by the Government of the United States with the railway companies. The work is performed under the statute, for the compensation that I have indicated.

Several presidents of the railway companies, in their examination before the Commission, stated that they received less pay for carrying the mails than they receive from the express companies, which pay them wheelage over the lines in the United States, and that the Government has a better contract, under the statute, with them than other persons for whom they carry similar matter or small articles of any character. On the other hand, it is contended that, although the express companies pay a large sum of money to the railway companies for wheelage, they can really carry the mails of the United States at less money than the railroads charge the Government of the United States and make a profit after paying the wheelage. If that is true, there is something wrong in the compensation.

It is said again that the railroad companies practice a fraud in obtaining the weights. I know nothing of that. We can not determine that question except from the meager testimony before us. It does appear in evidence before this committee that articles that were never intended for the mails, such as large tables, desks, safes, and articles of furniture, were carried in the mails of the United States. Whether the railroad companies weighed those articles or not it does not appear.

Mr. SIBLEY. Will my colleague yield?

Mr. MOON of Tennessee. Certainly.

Mr. SIBLEY. I should like to ask if it is not true that the railroads weigh nothing under the law, that a representative of the railroad company is not even permitted to be present to check the weighing, it being done solely and alone by the representatives of the Government, without a representative of the railway being allowed to be present—that they are denied the right, even, to check the weighing?

Mr. MOON of Tennessee. I am glad my friend made the suggestion. When I said the railway companies weighed it I did not mean that they furnished the force to do the weighing. We all understand that the United States Government furnishes the force that weighs the mail; but if these articles are there to be carried as mail matter, they are subject to be weighed, and ought to be weighed, and I assume that they are weighed. If they are not weighed, it is very clear that the Government of the United States is practicing a fraud upon the railroad companies which ought not to be tolerated. If this matter is weighed, it is equally clear that the railroad company is practicing a fraud upon the Government, and that ought not to be tolerated.

Now, Mr. Chairman, as I observed in the first place, the direct testimony is such that no intelligent body can form a proper judgment of what ought to be done. In the absence of satisfactory facts we must assume as truthful the deductions from facts that appear both for and against the railroad company in the consideration of the question. Then with an effort and a desire to give to the railroad companies and to the people exact and equal justice, if the circumstances and conditions surrounding railway mail transportation justify it, may we not insist on a trial test in the diminution of the rate of compensation?

Mr. HEPBURN. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Tennessee yield to the gentleman from Iowa?

Mr. MOON of Tennessee. Certainly.

Mr. HEPBURN. The gentleman a moment ago spoke of safes and tables and cases that were sent through the mails.

Mr. MOON of Tennessee. Yes.

Mr. HEPBURN. Will the gentleman inform the House who sent those, and how they got into the mails?

Mr. MOON of Tennessee. Those that I speak of, as shown in the hearing, appear to have been sent by the Treasury Department and the War Department of the United States Government.

Mr. HEPBURN. I did not know but it might be under the franks of Members of Congress.

Mr. MOON of Tennessee. No; I think Members of Congress are entirely free from that conduct.

Mr. LIVINGSTON. Let me suggest to the gentleman that the railroad companies under contract with the Government are compelled to take whatever is sent to them to be hauled or carried. They have no discretion about it. If the Government or the War Department, by order of the Secretary of War, sends anything to the railroad company they have got to take it, if it is in the ordinary mail coming from the Post-Office Department.

Mr. MOON of Tennessee. I doubt that very much, and for this reason: The law provides what matter is mailable. If a Department sends matter to the Post-Office Department that is not mailable, they ought not to accept it, but perhaps as a matter of courtesy between the Departments the law is overruled.

Mr. LIVINGSTON. Take this as an illustration: Two years ago there were thousands of books sent out of here by a minister of the Gospel, a Mr. Crafts, under a certain frank, and it is understood that they did kick on that, but they had to take it. The contract between the Government and the railroad companies is made on the part of the Postmaster-General. If the gentleman will read that contract—and of course he has read many of them—he will agree that the railroads can not help themselves, that they must take what is sent to them by the Post-Office Department.

Mr. MOON of Tennessee. The statute of the United States makes the contract, not the Department. It simply engages the railroad to perform it.

Mr. STEENERSON. Mr. Chairman, I would like to ask the gentleman from Tennessee a question.

Mr. MOON of Tennessee. I will yield to the gentleman.

Mr. STEENERSON. If the shipment of these extraordinary articles, like safes, were made between the weighing periods, would it not result that the railroad companies were carrying them for nothing?

Mr. MOON of Tennessee. Certainly; and would be an act of injustice on the railroad company.

Mr. STEENERSON. And they would be getting too much if they were shipped during the weighing periods?

Mr. MOON of Tennessee. Yes.

Mr. GOULDEN. I would like to ask the gentleman a question.

Mr. MOON of Tennessee. Very well.

Mr. GOULDEN. What provision is being made to guard against a like abuse in reference to the shipping of these heavy articles?

Mr. MOON of Tennessee. There is a proposed section in this bill that is intended to prevent that.

Mr. GOULDEN. Page 28, line 6, says:

> That hereafter no article, package, or other matter shall be admitted to the mails under a penalty privilege unless such article, package, or other matter would be entitled to admission to the mails under laws requiring payment of postage.

Is that the clause that the gentleman refers to?

Mr. MOON of Tennessee. Yes. In my opinion the articles

referred to as having been carried through the mail were not entitled to the privileges of the mail and are not now entitled to it; but this declaration on the part of Congress may, reasserted, protect the Department from that abuse.

Mr. SIMS. I would like to ask the gentleman a question in connection with what the gentleman from Georgia said. I understood him to say that a large number of books were shipped or mailed out of here by a man by the name of Crafts and that there was a kick about it. Who kicked—the Post-Office Department or the railroad company?

Mr. LIVINGSTON. The Post-Office Department.

Mr. SIMS. The railroad company didn't kick.

Mr. LIVINGSTON. No, they had to take it.

Mr. MOON of Tennessee. Mr. Chairman, it is clear, as I was about to observe when I was interrupted, that the Government of the United States through its Congress ought to take some active steps to remedy this matter. It has been over a quarter of a century since the law that provides for the compensation for carrying the mail was passed. The situation of things has changed materially. Transportation has gone down, it is said, in all lines, except United States mail. The Government ought not to permit itself to be imposed upon. Congress ought not longer to maintain on the statute book a law that will bring about this discrimination against the people. Make an amendment in line with the universal transportation reduction demanded by the public.

I refer to this, as I said in the beginning, not because we can legislate upon this bill at this time, but because it is a matter that arises in the consideration of the question before us and because, Mr. Chairman, of the existence of a rule in this House, the modification of which I think ought to be made promptly and about which I propose to speak for a moment later in this discussion.

Passing from this question of general railway mail pay of more than $43,000,000 proposed in the present bill as against $38,500,000 in the last one, I desire to call the attention of the House to the policy that has been invoked on the part of this House and sought to be continued as to certain items in the bill—the policy that in my judgment, or one of the policies embraced within the provisions of this act, is a very vicious one: It is granting the additional pay or compensation not provided in the general statute for railway mail pay; it is the granting of a gratuity or a subsidy, if gentlemen be not offended at that word, for alleged special facilities which in fact I believe do not materially exist.

Gentlemen rise on the floor in this House and demand special compensation to the railway company for that which they allege to be a special facility, resting their claim on the alleged benefits to a particular portion of a community in making the demand against the Federal Treasury. As a matter of principle it is wrong for the Government of the United States to permit its Treasury to be invaded to pay for a special privilege to particular individuals or sections. Surely this must be true if no general benefit can result to the whole people even indirectly.

Why should the particular railway company running from Kansas City, Mo., to Newton, Kans., and the railway company from the city of Washington to the city of New Orleans have privileges that no other railway companies in the United States have? Can any man give a legitimate reason for preferring these two roads—one a very short and insignificant one, and the other a long one, traversing a large portion of the country—as to why they should have certain privileges under this bill that the balance of the railway companies in the United States have not?

Mr. SIBLEY. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman from Tennessee yield to the gentleman from Pennsylvania?

Mr. MOON of Tennessee. Certainly.

Mr. SIBLEY. Inasmuch as the gentleman asks if anyone will say—I think that through the northern sections of the country the railways traverse thickly settled populations, where the other business incident to the traffic compensates them for carrying the mails expeditiously. Through the South the railway that carries these fast mails traverses a sparsely settled district. It increases the time into New Orleans about fifteen hours, and into the State of Texas and the West about a day. It has been said by the gentleman's colleague from Georgia [Mr. LIVINGSTON] that six locomotives wait at Atlanta, Ga., for the arrival of this train, and in this way the South is given an expedited service. A road like the Southern could not carry under similar conditions with a road like the Lake Shore or the Pennsylvania.

Mr. MOON of Tennessee. Mr. Chairman, I am glad that my distinguished friend from Pennsylvania has presented to the House a reason for his position upon this question. If the facts, as stated by him, were true, while his reason would not be a logical one, it might be a philanthropical one; but he is in utter ignorance of the facts, and therefore I excuse him for his untenable position. [Laughter.] The fact is that this railroad company does not make any better time than railway companies through the North, East, and West. It does not make as good time as a great many others. The fact that can not be disputed is that it runs through a section of the country that is as populous as the sections of the country traversed by nearly all of the roads in the other portions of the South and the West that do not receive a subsidy and through a more populous country than many of the northern roads traverse. My friend is mistaken in his facts.

Mr. RICHARDSON of Alabama. Mr. Chairman, will the gentleman allow me an interruption?

Mr. MOON of Tennessee. I yield.

Mr. RICHARDSON of Alabama. Is it not a fact, and does not the gentleman admit it to be true, that if this Southern train that carries this fast mail was taken off there would be a delay in the mails from Chattanooga on to New Orleans of from twelve to fourteen hours?

Mr. MOON of Tennessee. No; I admit that the fact is now that there is a delay in three hundred and forty-eight days in the year of from fifteen minutes to fifteen hours on every one of these lines. That is the report to the Department.

Mr. RICHARDSON of Alabama. But if you took off the train now?

Mr. MOON of Tennessee. Take it off and there would not be a particle of difference, and I will demonstrate that fact later. Mr. Chairman, these subsidized roads do no more for the sections through which they run than do vast numbers of other roads that are not subsidized. They pass through a country that is as populous as that passed through by many of the roads that are not subsidized. They have to-day a practical monopoly, as far as possible for the Department to give, of the mails along those lines. This Southern Railway receives, not including its connecting lines, under the general contract with the Government of the United States, for carrying mails from Washington to New Orleans, $1,340,000. This would seem to be enough.

Mr. FINLEY. Mr. Chairman, will the gentleman yield?

Mr. MOON of Tennesssee. I yield.

Mr. FINLEY. Mr. Chairman, I think the gentleman from Tennessee is in error. It receives $1,340,000 for the line direct from Washington to New Orleans, without taking into account any branch lines.

Mr. MOON of Tennessee. That is what I said.

Mr. FINLEY. I understood the gentleman to say including the branch lines.

Mr. MOON of Tennessee. No; I was proceeding to say, when the gentleman interrupted me, that this is aside from the pay of all its collateral lines. Let us look to the facts a moment before we get to the legal question that is involved in this proposition. The alleged reason, to begin with, was to have a close connection between New Orleans and New York, so that the morning train leaving New York could carry the mail to the South.

That was the argument of these gentlemen, to begin with, for the subsidy, but it so happens that the Pennsylvania division of this road from the city of Washington to the city of New York four or five years ago declined to ask for this subsidy any longer. I do not know the reason why it declined it. I have heard it stated, upon authority that I regarded as correct, that the road felt that its general pay for the carrying of mails was all the compensation to which it was entitled and did not demand it longer. If the prime cause for this subsidy demand was a fast mail from New York to New Orleans and the link in the line from New York to Washington is made ineffectual, not being under Government schedule, and trains are often delayed here at Washington, as is the case, on what ground, now, do they present their claim? They say, "We have put on an extra train—two cars for express and three for mail to New Orleans." That is true. That has been done, but this extra train when it reaches the city of Atlanta becomes a passenger train. Four passenger coaches are attached to it. But still this does not answer the question. The line between Washington and New York is not now subsidized and is not under United States control, and if its connections with the South are broken at Washington, how is New York mail especially expedited by the subsidy from Washington to New Orleans?

The gentleman from Pennsylvania suggested a while ago that by reason of the want of business it was necessary to give extra subsidy to this line. Let me remind him that the business has grown immensely along this line and that the railroad company has, since the line was subsidized, placed on another train absolutely necessary to carry its passenger traffic. I do not believe that this road could afford or would for a moment decline to retain its present service if this subsidy was stricken out, but,

gentlemen, I have been discussing merely collateral questions affecting the main issue. I do that because my distinguished friends from the South, my Democratic brethren who live along the line of this railroad company, are urging reasons of this sort. I do not like sectional Democracy or sectional Republicanism. I believe that this ought to be a National House of Representatives in its full significance.

Mr. GOULDEN. Mr. Chairman, will the gentleman yield?

Mr. MOON of Tennessee. I yield to the gentleman.

Mr. GOULDEN. I am one of those who voted against this subsidy in the last Congress.

Mr. MOON of Tennessee. I congratulate the gentleman from New York.

Mr. GOULDEN. But I am rather favorably inclined toward it now, for the proviso you inserted, I think, in the last session of the last Congress, says "that no part of this appropriation shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interests of the postal service."

Mr. MOON of Tennessee. I will explain that——

Mr. GOULDEN. With that proviso I should think that I would be rather justified in supporting it. I would like to know——

Mr. MOON of Tennessee. I said we ought to be national in our demands. What does the national Democratic party demand upon this question? It repudiates, it denounces, it condemns every character of subsidy. The Republican platform does likewise. Can you be heard to say to the people of the United States, standing upon your platform of opposition to a ship subsidy, that you are ready, because of a little paltry benefit to your immediate section, to violate the pledges of your party and the great tenets that it has held for a century? [Applause on the Democratic side.]

I believe, Mr. Chairman, that the southern Democrats ought to appeal to their people and not appeal to this railroad company, and they will find virtue, at least, in the support of the great people of the South, as it is found elsewhere. [Applause.] Let me revert to the question of the gentleman from New York. He speaks of this as a "directory section," giving power to the Postmaster-General to expend it in his discretion. That has been a provision of this bill from the beginning. The Postmaster-General has said to you, as he says here in this report upon which I lay my hand now, and in the testimony of the Second Assistant before the committee, that he did not estimate for this subsidy as he estimated for the expenses of the Government. He says:

> We have not asked Congress to give it. We pay it out simply because when we have not asked for it, when there is no demand on the part of the Department for it, you still insist and pass the law. We regard your action under such circumstances mandatory and imperative upon us to obey and pay the subsidy.

Mr. GOULDEN. I want to ask if it is included in the estimate of the Post-Office Department?

Mr. MOON of Tennessee. It is not included in the estimate of the Post-Office Department.

Mr. PAGE. May I interrupt my friend? On the contrary, is it not in the estimates of the Postmaster-General of these things that that will be saved from the former appropriation in his present recommendations to this Congress?

Mr. MOON of Tennessee. So I understand. Let me read to the House just for a moment. After various questions to the Second Assistant Postmaster-General upon this question, I asked General Shallenberger this question:

> Mr. MOON. Then, General, let me come down to the very bottom question of administration: Do you want this money or not?
> General SHALLENBERGER. We are not asking it, nor expressing an opinion in reference to it.
> Mr. MOON. What is the reason that you all are silent on that question?
> General SHALLENBERGER. We are not silent.
> Mr. MOON. You say you do not ask it?
> General SHALLENBERGER. We do not estimate for it.
> Mr. MOON. And what is the reason you do not ask it?
> General SHALLENBERGER. Because we think that the effect upon the service at large is better if we do not select any particular route in any particular section for special favors.
> Mr. MOON. Then you do not select it because you think that it is a bad example, and that it affects the railway mail service elsewhere to give this subsidy?
> General SHALLENBERGER. That is the situation.
> Mr. MOON. That is the situation. So you think that for the good of the service the thing ought not to be done, taking the country at large?
> General SHALLENBERGER. Why, I think that for the good of the service at large it is better that no special favors be given to any one particular road or system.

Mr. RICHARDSON of Alabama. Does the gentleman from Tennessee find anything in that condemning this service when Congress authorizes it?

Mr. MOON of Tennessee. I find the policy on the part of the Government condemning it. I find that the Department recognizes it as a special favor, a special facility to a special road in a special section, that operates specially to the detriment of the rest of the United States. That ought to be enough for any Democrat to know.

Mr. RICHARDSON of Alabama. Does the gentleman from Tennessee think that when the Government makes a contract for this service to be rendered, and then if the service was rendered, that it is a subsidy?

Mr. MOON of Tennessee. Yes. It was a subsidy contract. The gentleman simply, with all due respect for him, does not know what he is talking about. The Government of the United States has made a contract under statute with this very railroad company and the transportation of this identical mail, for which you are giving additional compensation to the extent of $196,000 a year upon a contract. I defy any intelligent lawyer upon this floor to deny the legal conclusion. When the Government of the United States by this solemn statute enacted that certain pay should be given for the transportation of certain mail it carried with it, by necessary implication in the contract and as a part of the law of the land entering into the contract, the obligation that the mail should be carried with reasonable haste and expedition.

If that be not so, you could carry the mail, under the statute, at any rate of speed. It is senseless to talk about the Government of the United States making a contract to carry slow mail. The law entering into every mail contract requires that reasonable haste and expedition be made; all necessary means and facilities for that haste and expedition constitute part of the contract. Additional compensation to induce the proper performance of a valid contract is not merely a subsidy, it is an iniquity.

Mr. RICHARDSON of Alabama. Well, the gentleman from Tennessee says I do not know what I am talking about. That is all very well.

Mr. MOON of Tennessee. If that offends my friend, I will take it back, and I will state that he knows what he is talking about, but that I have not been able to explain to him what I mean.

Mr. RICHARDSON of Alabama. And you never have been able to explain it. This matter has been up for years, and I have been uniformly in favor of it and you have uniformly opposed it, and I do understand what I am doing and what I am talking about, notwithstanding you say I do not.

Mr. MOON of Tennessee. I will agree with you on that proposition.

Mr. RICHARDSON of Alabama. That is what you did say.

Mr. MOON of Tennessee. I said it; and if the gentleman will oblige me to do so, I will say it again.

Mr. RICHARDSON of Alabama. I am not taking any offense at it, because the gentleman has never been able to convince me yet that I was not right.

Mr. MOON of Tennessee. I never have been able, and do not expect to be able, to convince you, because——

Mr. RICHARDSON of Alabama. I do differ with the gentleman on the general meaning of subsidy. I know I differ with you. I think it is just as much an obligation devolving upon the Government when this proposition is made to give so many thousand dollars to a railroad for this service when it comes up to the requirements and renders it—I believe in carrying out the contract in full, and the spirit and letter of the obligation is to pay that amount. Do you know how much money the railroad loses or will be taken from them annually for failing to make connection?

Mr. MOON of Tennessee. My objection is to making the subsidy contract. I know the service which you demand. You say it is a benefit to the country. I say it is not, simply for this reason—I am returning to the original proposition of benefits—for the simple reason if it made the connections from Washington to New Orleans every day on the main line, and then on the lateral lines which it owns fails to make connections so as to carry the mails into the interior of Tennessee and Texas, it would be utterly worthless, and the report of service says it is.

Mr. RICHARDSON of Alabama. I believe I am right in stating that the Tennessee legislature indorsed what the gentleman says is a subsidy.

Mr. MOON of Tennessee. I will say to the gentleman from Alabama——

Mr. RICHARDSON of Alabama. I just asked you that question.

Mr. MOON of Tennessee (continuing). That the Tennessee legislature did indorse this proposition some years ago, that many of the circuit judges and chancellors of the State indorsed it, that members of the county courts, lawyers, and members of the executive committee indorsed it; but they did so without knowledge of the truth. I knew that the power behind was the corporation that attempts to plunder the public Treasury [loud

applause], and I disobeyed that instruction. [Renewed applause.] My constituents have sustained me.

Mr. RICHARDSON of Alabama. I am perfectly surprised at the charge the gentleman makes against the Tennessee general assembly.

Mr. MOON of Tennessee. The gentleman does not understand me to make a charge against the members of the general assembly of Tennessee; but the members of that assembly, like the members of the general assembly of Alabama, are often ignorant of the facts, and most generally of law. [Great laughter.]

Mr. Chairman, I oppose, therefore, this provision, because of the detrimental effect it has upon the public service, because their compensation, the amount given, is specified by operation of law, and if it were not, I would object, because it is demoralizing to the Department of the United States Post-Office, and last, but not least, utterly demoralizing to the Democrats of some of the Southern States. [Laughter and applause.]

Mr. WILLIAM W. KITCHIN. If the gentleman from Tennessee will permit me right there, I understood the gentleman from Alabama to say that the Department makes no recommendation against this item.

Mr. RICHARDSON of Alabama. I did not say that. I asked the gentleman from Tennessee if he could find anything there in what he read condemning it.

Mr. WILLIAM W. KITCHIN. With the permission of the gentleman from Tennessee, I will read from the last report of the Postmaster-General, on page 9, in which he uses this language, which is a direct recommendation against it:

Curtailment has been recommended wherever possible, and many decreases are shown, of which the following are examples: Railway transportation, special facilities, $167,728.75.

Mr. RICHARDSON of Alabama. That simply says that railroad expenses have been decreased.

Mr. WILLIAM W. KITCHIN. Exactly the item which the gentleman from Tennessee [Mr. MOON] is now discussing.

Mr. RICHARDSON of Alabama. I do not read that in that way.

Mr. MOON of Tennessee. Mr. Chairman, the gentleman from Alabama does not read anything in any way except subsidy for the Southern Railway fast mail.

Mr. RICHARDSON of Alabama. That is not just. You ought not to say that, because I believe, just as the gentleman from Pennsylvania says——

Mr. MOON of Tennessee. If you will just take your seat for a moment, I will put you right.

Mr. RICHARDSON of Alabama. You put that reflection on me. I am not going to get offended. There is not the slightest danger of that; but I think the gentleman from Pennsylvania has stated the situation clearly when he says the dense population of the Northern and Eastern States does not require this special service while the situation in the South is very different.

Mr. MOON of Tennessee. But the facts do not sustain either the gentleman from Pennsylvania or the gentleman from Alabama on that proposition.

Now, Mr. Chairman, I concede to my distinguished friend and neighbor from Alabama, of course, honesty of purpose and good intention in this matter, as I do to all my other friends over here who differ with me about that. If I did not do that, I would do it as a matter of parliamentary courtesy if nothing else; but I do feel that these gentlemen really think they are getting special benefits, and that they are justified in it. I think it is wrong to take these benefits in this way from the Federal Treasury. There is the cardinal difference between us. They feel that they ought to vote for it because it is a benefit to them. I feel that I ought to vote against it, because I know that it is plundering the Treasury of my country. [Applause.]

But this is an unpleasant question for me to discuss with my neighbors, Mr. Chairman. Frequently it has occurred on the floor, and for two or three days they have not seemed as happy in my presence as before. [Laughter.] Therefore I will pass from the consideration of this question and present briefly one or two other questions.

Mr. JOHNSON. Before the gentleman leaves that question I should like to ask him a question.

Mr. MOON of Tennessee. Very well.

Mr. JOHNSON. Has the gentleman from Tennessee examined the report of the Second Assistant Postmaster-General when these special privileges were first afforded, in 1885 to 1890?

Mr. MOON of Tennessee. Not recently. I should be glad to have the gentleman call my attention to anything.

Mr. JOHNSON. I wish to call attention to the fact that in the report of the Second Assistant Postmaster-General submitted to Congress in December, 1890, he said that if these special appropriations for special facilities were provided for two or three years, the increase in the mail would be so great that the regular pay would equal both the subsidy and regular pay before, and then the subsidy could be withdrawn. That was in 1890; and I call the attention of the gentleman from Tennessee to the fact that the regular pay of the Southern Railroad from 1893 to 1896, from Washington to New Orleans, increased $499,700.73.

Mr. MOON of Tennessee. These are details of a discussion which I have not cared to go into at this time. I am obliged to my friend for reminding me of those special facts and presenting them to the House; but this question will be discussed in all of its features by other gentlemen, who will go into all the details. I just intended to touch the high places for a moment and pass on.

Mr. Chairman, there is another question that deserves the consideration of this House. It is a question affecting the whole country as perhaps no other question connected with the postal service does. It is a conceded fact that the deficit in the postal receipts is unquestionably produced, to a great extent if not wholly, by the transportation of second-class mail matter. It is estimated that it costs the Government 8 cents per pound to transport this matter for which it gets 1 cent per pound, a loss of 7 cents. It would seem as a matter of good business administration, as a matter of economy, that something ought to be done to remedy this condition; but when we take up the consideration of this question we are met at the very threshold with a policy adopted by the Government in its early history which prevents any radical increase in the rate of postage on this matter if that policy shall be maintained. The Government early adopted the wise policy of fixing a low rate of postage on second-class matter. Looking after the general welfare and interest of the United States, we can not repudiate this early policy of the Government at this time and attempt to make this character of mail matter self-sustaining.

The purpose was to give the literature of the country to the people; the purpose and intention of the Government in fixing that low rate was to encourage learning and letters and let the people be informed of the affairs of the Government; to let the people understand all that a great people ought to know that could come through those channels, to educate them to the high standard of citizenship. There has been perhaps no benefit that has ever accrued to the people of any Government on earth as great as that benefit that has been immediately and directly derived from the concession of the Government in carrying newspapers and magazines and matter of general literature and information. That this privilege under the statute has been abused there can be no question; that the Government might recoup its revenues by an increase in the compensation of postage on second-class matter there can be no question. I believe that the time has come, though, Mr. Chairman, in the United States, with the vast increase of the sources of information, the vast number of papers and magazines and books that we have, that we can now, without doing detriment to the policy pursued in the first place on the part of the Government, raise a little the postage on second-class matter.

If it were an increase of just 1 or 2 cents, saving and reserving from the operation of the law the newspapers to a certain extent of circulation, the revenue might be better and perhaps the literature might be better.

These are questions worthy of the consideration of this committee. Passing from this question I desire for a moment only to detain the House with another suggestion. There is too much discretionary power lodged by law to-day in this Department. There is too much discretionary power lodged in all the Departments. The Congress of the United States, the immediate representatives of the people, ought to assume the responsibility and give their mandates to those servants of the Congress and the people, the Departments and the Government.

There is, perhaps, no better illustration of that fact than may be found in conditions existing to-day. I know nothing of the merits of the controversy between the parties who have been excluded by fraud orders from the mail Department. I assume, in view of the controversy, that there are two sides to the question. It is clear to my mind that if the power is lodged in the Post-Office Department to exclude without the right of appeal or review magazines or any class of literature from the mails, that it is a most oppressive, dangerous, and tyrannous exercise of power.

The Congress has a right to vest not only semijudicial, but semilegislative functions in an administrative body, so far as the question of jurisdiction is concerned. But in its vestment, if the provision is not made for an appeal from that judgment; if the law provides no method of procedure for appeal or re-

view, the power of the Department is absolute, arbitrary, and tyrannical, and any citizen may be deprived of his right to-day without a hearing either in the Departments or in the courts of justice.

Mr. BARTLETT. Will the gentleman yield for an interruption?

Mr. MOON of Tennessee. I will.

Mr. BARTLETT. Will my friend tell me what remedy he suggests? The bill could not, unless a point of order was not made——

Mr. MOON of Tennessee. I will reach that question in a few moments. It is a dangerous thing always to vest an executive or an administrative officer with either quasi legislative or quasi judicial power. It is a prolific source of oppression to the citizen. It ought never to be done. This body ought not to shift the responsibility that rests upon it, or properly on judicial officers, and clothe these officers with powers they ought never to possess, if the welfare and interest of the people is to be maintained.

Mr. Chairman, it is useless for us to discuss, as I said, these questions unless there be some remedy for the evils of which we complain. They can not be remedied on an appropriation bill under the rules of the House as they exist to-day. I have no objection to drastic rules in a body of this size. It is unwieldy, and we need the power of the rule even to force legislation, but we do need rules that will operate justly and equally upon every Member and every party in this House. It is unwise for us, in view of the needs of this Government, to tie the Representatives of the people upon this floor. The present rules of the House of Representatives, in my judgment, are dangerous to the welfare of the people; and yet, take them altogether, leaving a few rules out of consideration, it is perhaps as good a code as we could obtain for a body of this size.

The power, though, which the Speaker has, or exercises if he chooses, under the construction of the rule, to turn from a Member and decline to recognize him for the purpose for which he rises, after once recognizing, is a most dangerous power in any parliamentary body. That power which you have given him, and which he exercises as your servant, is a power that ought never to be invoked against the interests of the people in the consideration of legislation. It denies equal opportunities to the membership of the House. It degrades the Representative.

Another rule to which I have referred is this: You prevent upon the consideration of an appropriation bill new legislation. Don't you think it would be wise to modify that rule to the extent that legislation which is germane to a particular subject of consideration may be presented? That is a wise rule to prevent riders being placed on an appropriation bill, riders foreign to the subject of consideration; but right here, right under this bill, at this hour if that rule were modified this House could consider the question of railway-mail pay; it could consider the question of changing the rate of second-class matter; it could consider the question of a usurpation of power under the statute in the Post-Office Department. But you are powerless under the rule which shackles you by your own will to do so. What further remedy have you? Can you appeal to the committee for consideration of these questions by separate bills? You have found those things vain and futile. If you clothe the Speaker with the power to name the committee instead of letting the House of Representatives select its own committeemen as the Senate does, you place it within his power to so organize the committees of this House as to forever defeat legislation coming before the committee, and then you put it beyond your power in this House by the rule to which I have referred of resuming the sovereign power to which you are entitled yourself. You have yielded away your power, you can not help yourselves. The result of this, Mr. Chairman, is that when gentlemen on the floor of this House find that it is impossible to be heard in the interest of their constituents, they yield. When a question arises in this body upon which they ought to have independent judgment——

The CHAIRMAN. The time of the gentleman has expired.

Mr. MOON of Tennessee. Mr. Chairman, the gentleman called down, having control of all the time on this side, will consume a little more of it.

The CHAIRMAN. Without objection, the gentleman will proceed beyond the hour.

Mr. MOON of Tennessee. Just for a little while, Mr. Chairman. We ought to go back to the consideration of these questions as they were considered in the days that are passed. We ought to break the chains of this House on the question of legislation. We ought not to place an autocrat in the Speaker's chair, but the humble servant of the representatives of the people, to do their behest. You put it in his power to destroy legislation. You put yourselves in his power as he forces legislation upon you. The majority party is responsible for this. You yield your rights, and, yielding them, you part with self-respect and become cowards, and when you become cowards you become slaves, and when you become slaves to a coterie of parliamentary despots you become the unfit representatives of a great and a free people. [Applause.]

Mr. SIMS. Mr. Chairman, I thoroughly agree with what the gentleman has been saying about this rule of not being permitted to legislate on an appropriation bill; but is it not a fact that it does not prevent that new legislation, provided that in the Senate they put on the same amendment that we rejected here in the House? It comes back then, and under the rules, and it is not out of order to consider that which has been once solemnly ruled out of order.

Mr. MOON of Tennessee. Of course, we agree on that question. It can legislate, while this House can not, under the rule.

Mr. SIMS. But the Senate forces us to do it.

Mr. MOON of Tennessee. The Senate, of course, forces us to do it. The Senate forces us to do nearly all we do. The Republican majority is not to blame alone for this.

Mr. SIMS. Mr. Chairman, I think the gentleman is right about that.

Mr. MOON of Tennessee. The Republican majority in this House has surrendered beyond all question freely and voluntarily all of the reserved rights of a Representative, save one or two, to the Speaker of the House. Now, if anybody has to exercise that power on the Republican side, I would as soon have the present Speaker do it as anybody in the world. It is not a question of the Speaker individually. I believe everybody in this House is personally fond of him. It is a question of the abrogation of the power of the Representatives so as to prevent legislation that is wholesome and just.

I have now demonstrated to the House, I trust, legislation that is needed upon this bill. I defy anyone to get one particle of it. You can not put it on here. You are tied by your rules; you can not put it through your committee, for the Speaker has tied your committee. What are you to do? Gentlemen, there are reserved rights, but only one or two to the House of Representatives.

If without the spirit of revenge or anger, if in obedience to the high dictates of duty, if in recognition of those representative rights which you all possess, you will say to the House of Representatives, "Be bound by the chains you have forged; no business shall be done in this House save by and in accordance technically with every rule that this House has adopted for the transaction of business," and you do that for a few weeks, then this majority and the Speaker will find themselves utterly powerless to move one inch in legislation. They will break the chains themselves, and they will tell the Speaker that he is no longer a master, but a servant of the House of Representatives. How was it in the days that are past? Was this a body in which the will and decree of a political coterie was registered? This was the great forum in which the battles of the people were fought. Here every great battle for American liberty and American citizenship has been fought out in behalf of the people, and to-day, like craven cowards, you have surrendered every right you have, given to the Speaker of the House of Representatives and the Committee on Rules, and without the slightest deliberation you pass for consideration to the other end of the Capitol every bill nearly that is before you.

Without naming any particular bill, but to show the evil effect of that and of ill-considered legislation, a bill is to-day pending, upon which this House has acted, affecting a great Territory proposed to be made a State, greater than the State of Missouri, where this House actually failed to extend, so far as some necessary provisions were concerned, the benefit of the law proposed to be enacted to a part of the Territory—unintentionally, of course. No consideration in committee, no consideration anywhere, until the Senate of the United States pointed out, to the shame of the House of Representatives, the patent defect. You gentlemen can not go back to the country and accuse the Republican party of all the wrongs that the people suffer at the hands of this once great but now degenerate body. The Democracy of the House of Representatives must exercise the reserved power of refusing and forbidding anything to be done, save in obedience to the law that the House has made for its government, and then the people will see where the chains are and who forged them, and they will put an end, I trust, to the wrongs and injustices that exist here.

Mr. SIMS. We witnessed the spectacle a few days ago of two Representatives on this floor, one a member of the Republican party and one a member of the Democratic party, who undertook to have one bill passed according to the general rules of this House, and the Committee on Rules got together and

decided that the general rules were the worst thing possible to apply to that appropriation bill; and they brought in a special rule, repealing the general rules and making in order everything that had gone out on points of order as well as all that remained. Is not that a fact?

Mr. MOON of Tennessee. Yes.

Mr. SIMS. Can not they do that with every single bill, as long as the majority is subservient to the Committee on Rules?

Mr. MOON of Tennessee. Of course, that may be so; there is no question about that, and the gentleman simply amplifies the suggestion I made.

Mr. SIMS. What are you going to do about it? Let us get down to something practical.

Mr. MOON of Tennessee. I was just suggesting to you a practical solution of it. Suppose when a gentleman gets on the floor of the House of Representatives and asks unanimous consent and the Speaker recognized the gentleman for unanimous consent; suppose you have no objection to the bill, but have objection to the exercise of that power emanating from one source alone, a power that practically controls the operations of the House, you have the reserved right as a Representative to say, "I object." That places the gentleman who made the motion in his seat. How is he going to get his bill up?

Mr. SIMS. I can answer that if the gentleman asks me.

Mr. MOON of Tennessee. He can not do it except upon call of committees on the day when it is reached, and the chances are only one in a hundred he can reach it then. He can not go to the Union Calendar and take a bill off that Calendar. There are three-fourths of the important bills of the House upon that Calendar, and that Calendar, by virtue of the power of the Speaker, has not been called for general consideration in ten long years in the House of Representatives. You can consider on it those things he favors only without unanimous consent or a special rule, and he controls recognition and is chairman of the Committee on Rules.

Mr. SIMS. Let me ask the gentleman——

Mr. MOON of Tennessee. The gentleman will excuse me just a moment.

Mr. SIMS. Then go ahead.

Mr. MOON of Tennessee. No; I will yield to the gentleman.

Mr. SIMS. Then what is to hinder the Committee on Rules from selecting out these very bills to which objection has been made and bringing in a special rule that they shall be considered without any reference to unanimous consent?

Mr. MOON of Tennessee. Well, what hinders the House of Representatives from exercising its power to overturn the Committee on Rules?

Mr. SIMS. Well, I thought the gentleman answered a while ago that we had about lost all self-respect and courage and everything else.

Mr. MOON of Tennessee. Oh, I think not; I did not mean to say and did not say that, Mr. Chairman. I meant to say that we had lost the power of resistance.

Mr. RICHARDSON of Alabama. Mr. Chairman——

The CHAIRMAN. Does the gentleman from Tennessee yield to the gentleman from Alabama?

Mr. MOON of Tennessee. I yield to the gentleman from Alabama.

Mr. RICHARDSON of Alabama. I heard you say something in your remarks relative to the degeneracy of the Democracy on this side of the House. I ask the gentleman the question—inasmuch as you called us degenerate—if when we were in power and Mr. Crisp, of Georgia, was Speaker the same rules were not substantially adopted then as are adopted now?

Mr. MOON of Tennessee. Yes; and they were just as infamous then as they are now. [Applause on the Democratic side.]

Mr. SIMS. I am not contending against what the gentleman says. I only wanted to find some way to do what he wants done.

Mr. MOON of Tennessee. I am not excusing—I can not excuse the present membership of this House from refusing to exercise its power in behalf of the people because some Democratic Congress did the same thing. I am a Democrat in every essential principle that the party has ever advocated, but I fear not to say that some of the greatest wrongs ever done to mankind were in the name of the Democratic party. [Applause.]

Mr. Chairman, I have already extended these impromptu suggestions far beyond what I intended. Now, I desire to yield twenty minutes to Mr. TOWNE, the gentleman from New York. [Loud applause.]

Mr. TOWNE. Mr. Chairman, I desire to subscribe very cordially to some of the remarks—indeed, practically to all of them—of the distinguished gentleman from Tennessee who has just resumed his seat, addressed to the subject of the rules of this House; but I wish to enter one important qualification in respect to the criticisms that are passed upon the Speaker. The Speaker is, in my judgment, almost as much sinned against as sinning. The fact that under both Republican and Democratic régimes very largely the same complaint has been made in respect to the exercise of quasi autocratic power by the Chair is itself a recognition to a considerable degree that the necessity for exercising that kind of power inheres in the duties of the office itself as it has evolved in our system.

Now, sir, I am not prepared at this moment to enter upon a careful discussion of certain matters that I wish merely to indicate for the sober consideration, in this connection, of the men who, as I hope, are to participate in the framing of the rules for the Sixtieth Congress. [Applause.] I mean the Democrats of this body. [Renewed applause.]

The Speakership of this House, sir, in its origin was not a political office. It is interesting to contrast it with the history of the speakership of the English House of Commons, whence we borrow very largely the model upon which this House is constructed. In the House of Commons the speaker is a mere moderator, who presides over a parliamentary body for the purpose of enforcing ordinary parliamentary rules. The office has no political significance. That fact is illustrated by the recent reelection of Mr. Lowther, the Conservative speaker, by the new enormous Liberal majority in the House of Commons.

If a speaker is a competent parliamentarian, a fair man, and a man of ability, no majority in the English Parliament cares to which party he belongs. But originally the English speaker was a political officer. His name signifies it. He spoke for the Commons with the King, and to a considerable degree was able to direct the deliberations of the House and to select the subjects upon which it should deliberate. In process of time there developed the English ministry, the responsible element in the control of the legislative in the British system. The ministry determines all the initiative in legislation, marks out the programme for the Commons, determines what propositions of legislation shall come before that body; and the opposition—I may interpolate at this point—has always the right to propose and discuss amendments. That function is ever the great factor in that general system of government to which the English Commons and this body belong, a system that the great commentator Bagehot has called a government by discussion; and if at any time this House shall ever have its ancient dignity and power restored and shall again appeal to the imagination and respect of the people of America, it will be when it shall have vindicated for itself the right to discuss all public measures proposed here. [Loud applause.] But in America we have never evolved anything that answers to the British cabinet or ministerial system. There must, however, in every majority temporarily controlling the deliberations of this House, be somewhere an initiative, the power of determining the policy according to which the majority shall choose to proceed, and how it shall exercise that power. It is interesting to note how this function has become an asset of our Speakership, an evolution in that office having occurred directly opposite from that which marked the English speakership. Speaker Muhlenberg, the first Speaker of the House of Representatives, nearly one hundred and twenty years ago, was a mere presiding officer, but in the course of time the officer who commenced as a mere moderator has developed into the most powerful political functionary in our Government.

I do not propose at this moment, and without preparation, to undertake a discussion of the philosophy implied in the fact I have cited. I shall merely suggest whether in this proposed and desirable reform of the rules of the House we are not face to face with more than a mere question of convenience, a deep question of government indeed, complicated with the evolution of our system itself. But there are some things that those who propose to reform these rules can entertain little difference about. One of them was suggested very ably by the gentleman from Tennessee in answer to a question. We can change the rules of the House. We can if we will. We will not if we submit ourselves to the dictation of a few men on grounds of alleged party interest and refuse to stand in favor of the inherent legislative rights of the House. The majority party can, if it will, make a few simple changes in the rules that will go a great way to restore the ancient capacities and prestige of the House.

For instance, now, if a man on the floor of this House desires to challenge the attention of the Chair he must arise in his place and address the Speaker; and, as I think the language of the rule is—although I have not seen it lately—"upon being recognized, he shall proceed in order." If he is not recognized he can not proceed, and we witness this anomalous and insulting thing—although the Speaker is not in a personal sense to blame for it, let me say, it is inherent in the rules—that a man representing a great American constituency, with something to speak about and to think about and to propose to this great body on his

individual and political responsibility, arises in his place here and the Speaker says to him, "For what purpose does the gentleman rise?" And if the purpose does not suit the Speaker the Member has not, to any effectual purpose, arisen at all, but has to take his seat.

Now, sir, when two or more men are contemporaneously challenging the attention of the Chair, it is a mere necessity that he shall choose which one to recognize. No rule can ever obviate that; but it has happened time and again—it happened in my own case in the Fifty-fourth Congress—that but one Member is asking recognition from the Chair, and that he can not get the floor. Now, I undertake to say that any Representative of a great constituency of the American people upon this floor has a right, or ought to have the right, to ask the attention of the Chair and the House to anything he wishes to bring to the attention of this assembly when nobody else is claiming the floor at the same time. [Applause.]

Now, sir, this by way of unsystematic and scarcely tangible connection with an extraneous matter to which I desire, under the latitudinous necessity of these same rules [laughter], very briefly to invoke the attention of the House.

The right of labor to organize is nowhere now seriously questioned. That, on the whole, the exercise of that right has been greatly beneficial to the vast body of wage-earners, and, hence, of benefit to the country, whose welfare is so intimately dependent upon theirs, is likewise generally admitted. To say this is not to deny that here and there ambition and self-interest have committed wrongs in the name of labor and, using the instruments of its organization for private purposes, have put in peril the credit of the cause itself; it is not even to deny that trades-unions and labor federations, in the clash of interests that has attended the phenomenal industrial changes of recent times, may occasionally have exceeded the limit prescribed by a just subordination of class concern to the general welfare of society. But it is right to remember that the organization of labor did not precede, but followed, the organization of capital; that its very origin was in defense, not in aggression.

But these considerations only enforce the necessity of a clearer understanding between organized labor on one hand and the manifold interests of society on the other, to the end that public sentiment shall both recognize the just claims of labor and insist in turn that it shall respect necessary and salutary limitations in its organized effort to secure them.

Under our representative institutions it is inevitable that citizens should seek to influence the enactment and enforcement of laws deemed by them likely to improve their social and industrial conditions. Wage-earners can not be expected to be oblivious of this privilege. Indeed, it has always been one of the chief arguments of the party in power in favor of its continued supremacy that its policies were largely shaped to achieve the welfare of the laboring man. Accordingly, it is not surprising that these policies should be subjected to close scrutiny by the men whom the competition of leadership has brought to the front in labor councils, men like Samuel Gompers, president of the American Federation of Labor, John Mitchell, president of the Coal Miners' Union, Andrew Furuseth, president of the International Seamen's Union, and many others of similar ability and influence.

One consequence of this scrutiny has been the formulation by the executive council of the American Federation of Labor of a petition for redress of grievances, addressed, and on Wednesday, March 21, formally presented, to the President of the United States, the President pro tempore of the Senate, and the Speaker of the House of Representatives.

This petition, sir, which is quite the most significant utterance of the sort in recent economic history, contains a recital of the principal complaints which organized labor conceives itself to have against the powers now and for some time past responsible for the legislative and administrative policies of the country. These complaints may be thus conveniently summarized:

First. They complain that the eight-hour law is grievously and frequently violated; that since 1894 they have vainly sought to secure legislation remedying the defects of that law and extending its provisions to all work done on behalf of the Government; that recently, without a hearing to the advocates of eight-hour legislation, a law was passed by Congress and signed by the President, as a rider on an appropriation bill, "nullifying the eight-hour law and principle in its application to the greatest public work ever undertaken by our Government—the construction of the Panama Canal."

Second. They complain that no heed has been paid to labor's request for legislation safeguarding it against the competition of convicts.

Third. They complain that no result has followed their demand for relief against the evils of "induced and undesirable immigration;" that the Chinese-exclusion law is being "flagrantly violated," and that it is now "seriously proposed to invalidate that law" and reverse our policy.

Fourth. They complain that equal rights are denied to seamen; that even the partial relief afforded them by the laws of 1895 and 1898 have been threatened at each succeeding Congress; that petitions in behalf of the seamen have been denied "and a disposition shown to extend to other workmen the system of compulsory labor," and that, "under the guise of a bill to subsidize the shipping industry, a provision is incorporated, and has already passed the Senate, providing for a form of conscription which would make compulsory naval service a condition precedent to employment on privately owned vessels."

Fifth. They complain that undermanning and unskilled manning of vessels are largely responsible for disasters like the burning of the *Slocum* in New York Harbor and the wreck of the *Rio de Janeiro* at San Francisco, with their terrible and unnecessary loss of human life, and that measures presented by them more in the interest of the public than of themselves, calculated to prevent such calamities, have not been adopted.

Sixth. They complain that they have vainly sought the passage of a law prescribing that barges towed at sea shall be properly manned and equipped so as to avoid the loss of life now frequently involved in cutting them loose during storms and leaving the crews to perish.

Seventh. They complain that the "antitrust and interstate-commerce laws enacted to protect the people against monopoly in the products of labor, and against discrimination in the transportation thereof, have been perverted, so far as the laborers are concerned, so as to invade and violate their personal liberty as guaranteed by the Constitution," and that their repeated efforts to obtain redress from Congress have been in vain.

Eighth. They complain of the abuse of the "beneficent writ of injunction" in labor disputes, claiming that it has been perverted from the protection of property rights to the destruction of personal freedom, and that there is a threat of "statutory authority for existing judicial usurpation."

Ninth. They complain that the committees of this House having jurisdiction of matters particularly of interest to labor have been constituted inimically to it, and that requests to the Speaker to remedy this condition as apparent in the last two Congresses have been followed in the present Congress by even an accentuation of the condition.

Tenth. They complain that the constitutional right of petition has been invaded by the Executive order recently issued "forbidding any and all Government employees, upon pain of instant dismissal from the Government service, to petition Congress for any redress of grievances or for any improvement in their condition."

In view of the interest and importance of this document, Mr. Chairman, I ask consent to print it as a part of my remarks.

The CHAIRMAN. The request of the gentleman from New York will be granted, unless there be objection.

There was no objection.

The document is as follows:

WASHINGTON, D. C., *March 21, 1906.*

Hon. THEODORE ROOSEVELT,
President of the United States;
Hon. WM. P. FRYE,
President pro tempore, United States Senate;
Hon. JOSEPH G. CANNON,
Speaker House of Representatives, United States.

GENTLEMEN: The undersigned executive council of the American Federation of Labor, and those accompanying us in the presentation of this document, submit to you the subject-matters of the grievances which the workmen of our country feel by reason of the indifferent position which the Congress of the United States has manifested toward the just, reasonable, and necessary measures which have been before it these past several years, and which particularly affect the interests of the working people, as well as by reason of the administrative acts of the executive branches of this Government and the legislation of the Congress relating to these interests. For convenience the matters of which we complain are briefly stated, and are as follows:

The law commonly known as the "eight-hour law" has been found ineffective and insufficient to accomplish the purpose of its designers and framers. Labor has, since 1894, urged the passage of a law so as to remedy the defects, and for its extension to all work done for or on behalf of the Government. Our efforts have been in vain.

Without hearing of any kind granted to those who are the advocates of the eight-hour law and principle, Congress passed and the President signed an appropriation bill containing a rider nullifying the eight-hour law and principle in its application to the greatest public work ever undertaken by our Government, the construction of the Panama Canal.

The eight-hour law in terms provides that those intrusted with the supervision of Government work shall neither require nor permit any violations thereof. The law has been grievously and frequently violated. The violations have been reported to the heads of several Departments, who have refused to take the necessary steps for its enforcement.

While recognizing the necessity for the employment of inmates of our penal institutions so that they may be self-supporting, labor has urged in vain the enactment of a law that shall safeguard it from the competition of the labor of convicts.

In the interest of all of our people and in consonance with their almost general demand, we have urged Congress for some tangible

relief from the constantly growing evil of induced and undesirable immigration, but without result.

Recognizing the danger of Chinese immigration and responsive to the demands of the people, Congress years ago enacted an effective Chinese-exclusion law, yet despite the experience of the people of our own country, as well as those of other countries, the present law is flagrantly violated, and now, by act of Congress, it is seriously proposed to invalidate that law and reverse the policy.

The partial relief secured by the laws of 1895 and 1898, providing that seamen shall not be compelled to endure involuntary servitude, has been seriously threatened at each succeeding Congress. The petitions to secure for the seamen equal right with all others have been denied and a disposition shown to extend to other workmen the system of compulsory labor.

Under the guise of a bill to subsidize the shipping industry a provision is incorporated, and has already passed the Senate, providing for a form of conscription, which would make compulsory naval service a condition precedent to employment on privately owned vessels.

Having in mind the terrible and unnecessary loss of life attending the burning of the *Slocum* in the harbor of New York, the wreck of the *Rio de Janeiro* at the entrance to the Bay of San Francisco, and other disasters on the waters too numerous to mention, in nearly every case the great loss of life was due to the undermanning and the unskilled manning of such vessels, we presented to Congress measures that would, if enacted, so far as human law could do, make impossible the awful loss of life. We have sought this remedy more in the interests of the traveling public than in that of the seamen, but in vain.

Having in mind the constantly increasing evil growing out of the parsimony of corporations, of towing several undermanned and unequipped vessels called "barges," on the high seas, where, in case of storm or stress, they are cut loose to drift or sink, and their crews to perish, we have urged the passage of a law that shall forbid the towing of more than one such vessel unless they shall have an equipment and a crew sufficient to manage them when cut loose and sent adrift, but in vain.

The antitrust and interstate-commerce laws enacted to protect the people against monopoly in the products of labor, and against discrimination in the transportation thereof, have been perverted, so far as the laborers are concerned, so as to invade and violate their personal liberty, as guaranteed by the Constitution. Our repeated efforts to obtain redress from Congress have been in vain.

The beneficent writ of injunction intended to protect property rights has, as used in labor disputes, been perverted so as to attack and destroy personal freedom, and in a manner to hold that the employer has some property rights in the labor of the workmen. Instead of obtaining the relief which labor has sought, it is seriously threatened with statutory authority for existing judicial usurpation.

The Committee on Labor of the House of Representatives was instituted at the demand of labor to voice its sentiments, to advocate its rights, and to protect its interests. In the past two Congresses this committee has been so organized as to make ineffectual any attempt labor has made for redress. This being the fact, in the last Congress labor requested the Speaker to appoint on the Committee on Labor Members who, from their experience, knowledge, and sympathy, would render in this Congress such service as the committee was originally designed to perform. Not only was labor's request ignored, but the hostile make-up of the committee was accentuated.

Recently the President issued an order forbidding any and all Government employees, upon the pain of instant dismissal from the Government service, to petition Congress for any redress of grievances or for any improvement in their condition. Thus the constitutional right of citizens to petition must be surrendered by the Government employee in order that he may obtain or retain his employment.

We present these grievances to your attention because we have long, patiently, and in vain waited for redress. There is not any matter of which we have complained but for which we have, in an honorable and lawful manner, submitted remedies. The remedies for these grievances proposed by labor are in line with fundamental law, and with the progress and development made necessary by changed industrial conditions.

Labor brings these its grievances to your attention because you are the Representatives responsible for legislation and for failure of legislation. The toilers come to you as your fellow-citizens, who, by reason of their position in life, have not only, with all other citizens, an equal interest in our country, but the further interest of being the burden bearers, the wage-earners of America. As labor's representatives we ask you to redress these grievances, for it is in your power so to do.

Labor now appeals to you, and we trust that it may not be in vain. But if perchance you may not heed us, we shall appeal to the conscience and the support of our fellow-citizens.

Very respectfully,

SAMUEL GOMPERS,
JAMES DUNCAN,
JAMES O'CONNELL,
MAX MORRIS,
DENNIS A. HAYES,
DANIEL J. KEEFE,
WM. D. HUBER,
JOSEPH F. VALENTINE,
JOHN B. LENNON,
FRANK MORRISON,

Executive Council American Federation of Labor.

List of representatives of labor associated with the executive council of the American Federation of Labor in the presentation of labor's grievances, March 21, 1906.

John C. Schmidt, Bakers and Confectioners' International Union of America.
Rudolph Shirra, Bakers and Confectioners' International Union of America.
Thomas H. Lockwood, Pocketknife Blade Grinders and Finishers' National Union.
Thomas R. Keenan, Brotherhood of Boiler Makers and Iron Shipbuilders of America.
Peter L. Mitchell, Brotherhood of Boiler Makers and Iron Shipbuilders of America.
James F. Speirs, Brotherhood of Boiler Makers and Iron Shipbuilders of America.
John P. Frey, Iron Moulders' Union of North America.
Ed F. Weber, International Association of Glass House Employees.
Hugh Falvey, American Brotherhood of Cement Workers.
F. C. Gengenback, American Brotherhood of Cement Workers.
P. H. Malloy, American Brotherhood of Cement Workers.
J. J. Crowley, the Granite Cutters' International Association of America.
John Lyons, the Granite Cutters' International Association of America.
Frank McArdle, International Brotherhood of Foundry Employees.
Cornelius P. Shea, International Brotherhood of Teamsters.
Thomas C. Fox, International Brotherhood of Teamsters.
J. E. Toome, International Brotherhood of Teamsters.
James F. Fitzgerald, Pulp, Sulphite, and Paper Mill Workers.
Timothy Healy, International Brotherhood of Stationary Firemen.
N. A. James, International Brotherhood of Stationary Firemen.
H. E. Burns, International Brotherhood of Stationary Firemen.
F. M. Nuse, International Brotherhood of Stationary Firemen.
Christian Schlag, International Brotherhood of Stationary Firemen.
William McPherson, International Carriage and Wagon Workers.
William M. Merrick, Plumbers, Gas Fitters, Steam Fitters, and Steam Fitters' Helpers of the United States and Canada.
Joseph H. Gallagher, Plumbers, Gas Fitters, Steam Fitters, and Steam Fitters' Helpers of the United States and Canada.
John R. Alpine, Plumbers, Gas Fitters, Steam Fitters, and Steam Fitters' Helpers of the United States and Canada.
P. H. Cummins, International Brotherhood of Blacksmiths.
J. W. Kline, International Brotherhood of Blacksmiths.
Charles T. Smith, International Steel and Copper Plate Printers' Union of North America.
E. L. Jordan, International Steel and Copper Plate Printers' Union of North America.
T. L. Mahan, International Steel and Copper Plate Printers' Union of North America.
William Dodge, Paving Cutters' Union of the United States and Canada.
James J. Dunn, Glass Bottle Blowers' Association of the United States and Canada.
William Launer, Glass Bottle Blowers' Association of the United States and Canada.
Frank Feeny, International Union of Elevator Constructors.
Charles Hank, International Brick, Tile, and Terra Cotta Workers' Alliance.
Henry Nolda, Upholsterers' International Union of North America.
Charles E. Lawyer, International Tin Plate Workers' Protective Association of America.
George Powell, International Tin Plate Workers' Protective Association of America.
W. J. McSorley, International Union of Wood, Wire, and Metal Lathers.
R. V. Brandt, International Union of Wood, Wire, and Metal Lathers.
W. S. Crown, American Federation of Musicians.
C. P. Huestis, American Federation of Musicians.
Charles Derlin, American Federation of Musicians.
Thomas F. Ryan, Amalgamated Sheet Metal Workers' International Alliance.
Daniel L. Desmond, Amalgamated Sheet Metal Workers' International Alliance.
Joseph A. Daly, Amalgamated Sheet Metal Workers' International Alliance.
W. F. Gilmore, Amalgamated Society of Carpenters and Joiners.
George G. Griffin, United Brotherhood of Carpenters and Joiners.
William M. Lewis, Brotherhood of Painters, Decorators, and Paper Hangers of America.
Frank X. Noschang, Journeymen Barbers' International Union.
Thomas O. Hughes, International Union of Slate Workers.
G. M. Huddleston, International Slate and Tile Workers' Union of America.
Ben Russell, International Slate and Tile Workers' Union of America.
Thomas F. Tracy, Cigar Makers' International Union of America.
J. A. Roberts, Cigar Makers' International Union of America.
Martin Helmuth, Amalgamated Meat Cutters and Butcher Workmen of North America.
W. E. Thompson, International Ceramic, Mosaic, and Encaustic Tile Layers and Helpers' Union.
C. O. Pratt, Amalgamated Association of Street and Electric Railway Employees of America.
T. C. Parsons, International Typographical Union.
John P. Murphy, Boot and Shoe Workers' Union.
John J. Binder, International Union of United Brewery Union.
John Mangan, Steam Fitters' International Union.
James M. Cumming, Steam Fitters' International Union.
Charles N. Isler, Steam Fitters' International Union.
Henry Fischer, Tobacco Workers' International Union.
William Feenie, United Powder and High Explosive Workers of America.
James G. McCrindle, United Powder and High Explosive Workers of America.
Andrew Furuseth, International Seamen's Union of America.
J. L. Feeney, International Brotherhood of Bookbinders.
Rodney L. Thixton, International Stereotypers and Electrotypers' Union of North America.
Michael J. Shea, International Stereotypers and Electrotypers' Union of North America.
James F. Splann, International Stereotypers and Electrotypers' Union of North America.
F. M. Ryan, International Association of Bridge and Structural Iron Workers.
P. J. McArdle, Amalgamated Association of Iron, Steel, and Tin Workers.
Martin Higgins, International Printing Pressmen's Union.
John Golden, United Textile Workers of America.
J. T. Carey, International Brotherhood of Papermakers, etc.
Thomas Meller, International Brotherhood of Papermakers, etc.
H. B. Perham, The Order of Railroad Telegraphers.
J. F. McCarthy, Central Labor Union, Washington, D. C.
Charles W. Winslow, Central Labor Union, Washington, D. C.
Shelby Smith, Allied Printing Trades Council, Philadelphia, Pa.
John Fitzpatrick, Chicago Federation of Labor.

Mr. TOWNE. It is not necessary that a man should subscribe in detail to all the allegations of this petition in order to be in general accord with its spirit. No candid observer of recent history can fail to know that the political party now in power in this country is, as an organization, the agent of the dominant economic forces of the age; a fate, let me say, which is not at all unprecedented or unusual. Such a state of affairs occurs to a greater or less extent, no matter which party is in power. The economic forces of the age will impress themselves upon the tendencies of legislation, through the control of the

dominant party, from time to time, in all self-governing communities; which fact only emphasizes, however, the necessity of changing parties from time to time in order to give contrary tendencies a chance to express themselves in the corrective legislation that may thus result. [Applause.]

Mr. WM. ALDEN SMITH. A change of bosses.

Mr. TOWNE. Yes; if bosses be necessary, Heaven knows they should be changed. And, Mr. Chairman, it is also true that those economic forces tend to capitalistic combination and consolidation; that, if unrestrained and unregulated, they threaten the stability of the social order, and that the workingmen of the country may justly feel an especial interest in curbing the rapacity of these organized appetites which exist, either by the warrant or by the permission of the laws. In this enterprise these petitioners become allies of all members of society not immediately associated in schemes of spoliation and plunder. When thus engaged they cease to be a faction, but become the representatives of the general welfare. Instead of meriting the appellation of agitators and disturbers, they range themselves among the conservative elements of our institutions in furtherance of what has become the great patriotic political duty of the hour; the restoration in the Republic of the ancient standards of justice and equality under the law, the mingled safety and progress that constitute the goal and the sanction of democratical government. [Prolonged applause.]

MESSAGE FROM THE SENATE.

The committee informally rose; and Mr. STERLING having taken the chair as Speaker pro tempore, a message from the Senate, by Mr. PARKINSON, its reading clerk, announced that the Senate had insisted upon its amendments to the bill (H. R. 8461) to amend chapter 1495, Revised Statutes of the United States, entitled "An act for the survey and allotment of lands now embraced within the limits of the Flathead Indian Reservation, in the State of Montana, and the sale and disposal of all surplus lands after allotment," as amended by section 9 of chapter 1479, Revised Statutes of the United States, disagreed to by the House of Representatives, had agreed to the conference asked by the House on the disagreeing votes of the two Houses thereon; and had appointed Mr. CLARK of Montana, Mr. MCCUMBER, and Mr. GAMBLE as the conferees on the part of the Senate.

The message also announced that the Senate had passed bill of the following title; in which the concurrence of the House of Representatives was requested:

S. 5059. An act to increase the limit of cost of the post-office at Yankton, S. Dak.

The message also announced that the Senate had agreed to the amendment of the House of Representatives to the concurrent resolution of the Senate (No. 13) authorizing the reprinting of 10,000 additional copies of the testimony taken by the Senate Committee on Interstate and Foreign Commerce, in the consideration of the so-called "railroad rates bill," and a digest of said testimony prepared under the direction of said committee.

POST-OFFICE APPROPRIATION BILL.

The committee resumed its session.

Mr. OVERSTREET. Mr. Chairman, I yield one hour to the gentleman from Minnesota [Mr. STEENERSON].

Mr. STEENERSON. Mr. Chairman, I desire during the time that has been allotted to me to discuss the somewhat misunderstood and complicated question of railway mail pay. Before doing so, I desire to refer briefly to the situation of this appropriation bill in committee and in this House. Of course, we understood that no general legislation could be placed on this bill without being subject to a point of order, and therefore the committee did not undertake a general investigation of this most important subject. It being necessary, however, to make an appropriation for the railway transportation of mails, the matter was incidentally discussed; especially was it discussed with reference to this item which has come up before Congress at the last three sessions, and several Congresses before, about special facility pay to this particular line, and which seems to have friends on both sides of the Chamber.

It is in order to leave that appropriation out, because it is an appropriation that is simply annual, and it appears with every appropriation bill. This matter, brought before the Committee on the Post-Office and Post-Roads, brought out a good deal of dissension, and when the matter was submitted to the full committee they were practically evenly divided; those who supported the special-facility pay and those who favored it reserved the right to discuss it on the floor of the House. Everyone is at perfect liberty to discuss it.

Now, that is the parliamentary situation as I understand it, and I expect to support an amendment striking out the special-facility pay. Before doing so I desire to discuss the basis upon which railroad mail pay in general is awarded and what that pay is. This I deem to be necessary, if the House will indulge me, because there seems to be a great deal of misinformation upon the subject.

I have seen articles in the newspapers relative to this matter which were entirely misleading, and there is a general misunderstanding as to what extent pay is proportioned to a just compensation.

A few days ago an article from the Washington Post was inserted in the RECORD relative to a certain railroad in Michigan. I received from that railroad a circular containing an answer, and I introduce this simply as a sample of the misinformation circulated throughout the United States on the subject of railroad mail pay. As a matter of fact, I expect to convince the House, or at least those who do me the honor to listen, that although the pay to the railroad where the traffic is light is twenty times as much per pound as where it is heavy, yet it actually, in proportion to the expense of the service, is too small, or at least is very small pay, and if there is any overpay at all it is to the railroads that do a large business. I will read this extract which was put in the RECORD two or three days ago:

The little railroad running from Pontiac to Caseville, Mich., is 100 miles long. Two trains carry mail on this route, the daily weight of the mail being 926 pounds. The United States pays $8,262 a year for this service. The trains also carry passengers and express. The total cost of operating these two trains is $14,160 a year. The United States, therefore, pays 58 per cent of the cost of operation.

Now, here is the answer which the railroad company officials, I assume, sent in this circular:

The foregoing paragraph contains four false statements:

1. The cost of operating this road, which it is proper to consider and estimate in connection with the receipts from carriage of mails, was $149,400, and not $14,160.

2. The railroad paid out of its mail pay for delivery of the mails at fifteen points, $1,240, so that its real compensation was $7,022, and not $8,262.

3. The compensation of this road for carrying the mails was 5 per cent of the expense of operation, and not 58 per cent.

4. The road, instead of being overpaid for the service it is performing for the Government in mail transportation, is much underpaid.

What are the facts? This little railroad begins at Pontiac, Mich. Its total receipts are barely sufficient to meet its operating expenses and taxes. It is in the hands of a receiver. The receiver recently visited Washington in the vain endeavor to secure an increase in their mail pay. The operating expenses of the road were, last year, $149,400. These expenses included taxes, the expense of maintaining the roadway and bridges, renewals of ties and iron, telegraph and station service, clerical service, superintendence, and the other ordinary expense of operation.

How is the service performed by this road for the Government in furnishing the mails to the people of this Congressional district?

It is performed entirely in apartment cars, which are provided by the railroad, the space set apart and fitted up in one car for a distributing post-office, in which a mail clerk travels, being 18 feet, and in another 12 feet—one-half the car in each case.

Deducting the expense of messenger service, this Pontiac railroad receives $22.50 per day for serving twenty-two towns and stations along 100 miles of road with four daily mails, or $1 per town. It provides half a car, fitted up as a post-office, in a passenger train, and carries a mail clerk in each car, who distributes 926 pounds of mail, all for $22.50 per day, while two passengers carried on each of the same trains pay $22.80 in fares. The two passengers might occupy one seat; the mails always occupy half the car, which transports the messenger as well as the mails.

Taking the country over, upon all railroads where the weight is light and mails are carried in apartment cars, in which half the car is fitted up for a post-office and a messenger is transported, the actual pay received by the road, deducting the expense for delivery to post-offices within a quarter of a mile of the station, will not exceed two full passenger fares on the same train.

The mail pay of the Pontiac road, performed in this exceptionally expensive manner, such as is not done and would not be done for any other patron, amounts to 6.54 cents per mile of service, or lower than the average pay per mile of star route service in this country.

The average pay per mile of rural free-delivery service is 10.57 cents, or 60 per cent more than the Pontiac road receives per mile for performing an altogether more valuable and expeditious and useful mail service.

Mr. SAMUEL W. SMITH. If it will not interrupt the gentleman, I would like to suggest that Mr. Bennett did not attempt to give the whole cost of the operation of the road for the year, but it was only in the case of two trains.

Mr. STEENERSON. I don't know. I don't know whether the facts sent me in this circular are correct, but I assume that they are. This railroad affords a fair illustration of the principle that I shall try to make plain—that the pay is largest per pound where the traffic is the lightest, and yet it is the least remunerative; that if there is any overpayment anywhere it is on those roads where the mail traffic is very heavy.

This is a fair sample of that misinformation that is scattered throughout the country and which we often hear even on this floor. I recollect in the last Congress I heard one gentleman speak of the fact that we paid in rent every year for R. P. O. cars more than they cost. Of course that is true, or approximately so, but we should take into consideration the fact that in an R. P. O. car weighing 100,000 pounds probably a maximum load of 10,000 pounds of mail is carried, so that there are

ten parts of dead weight to one part of live freight to be drawn and consequently the extra pay for moving that car three hundred and sixty-five days each way on a line is not unreasonable pay. But in regard to the operation of the law upon which railway mail pay is adjusted, I desire to call the attention of the House to this fact, that the gentleman from Tennessee [Mr. MOON], who deplores the fact that we are appropriating more and more money in this bill for railway service, is certainly mistaken about that being a deplorable fact. It is an evidence of health and growth. What difference does it make how much we appropriate for transportation of mail if we get an increased traffic? None at all. I desire to say in reference to a remark made by the gentleman from Tennessee [Mr. MOON]—and I will say right here that there is no man on the floor of this House for whom I entertain a higher opinion—that the increase in the appropriation is due to the growth of the transportation, and I call attention to the fact that when this great postal investigation was carried on, from 1899 to 1901, for three long years by the so-called Postal Commission, when every railway accountant of any prominence in the United States was heard, and where they employed one of the greatest experts in that branch of science that is known in the United States, Professor Adams, of the University of Michigan, professor of economics and finance and also statistician for the Interstate Commerce Commission, this subject was investigated, and the result, after a special weighing throughout the United States in 1899, arrived at was that the United States Government paid out for railway transportation proper 35 per cent of its postal receipts. That was for the year 1899.

Now, I believe those figures of Professor Adams have never been disputed, even by his critics, for I notice that Professor Newcomb, who severely criticised his figures in some respects, does not dispute that. That was at that time less, I believe, than was paid in England or in any country in Europe. I have here a table which I have prepared, showing that in the next year, 1900, that of the total receipts for postal service, without counting R. P. O. cars and special facility, the railway transportation amounted to 34½ per cent. The next year we expended 32 per cent of total receipts for railway transportation of mails. The next year it was 30½ per cent of the total receipts for transportation by rail. The next year, 1902, we expended 28½ per cent of the total receipts for railway mail transportation. The next year, 1903, we expended 27½ per cent of total receipts for railway mail transportation. In 1904 we expended 26⅞ per cent, and in 1905, the last year for which there are any statistics, we expended 26⅛ per cent. However, I do not think it is fair to figure railway mail transportation without including R. P. O. pay and special-facility pay, if there is any, because it is all paid for railway transportation. I figure that for last year, counting the whole amount of $5,000,000 for R. P. O. cars, or traveling post-offices, as they have been called, and special facility included, still the total we paid for railway transportation of mails was only 29½ per cent of the total receipts for postal service. So that we have decreased the proportion since 1899 from 35 per cent to 29 per cent, a decrease of over 6 per cent in the proportion that we pay for railway mail transportation to the total revenue from the postal service. This is a very significant fact.

Table showing percentage of railway mail pay to postal receipts.

Year.	Receipts.	Expenditures.	Railway transportation expenses, exclusive of R. P. O. and special facility.	Per cent of receipts.
1900	$102,345,579.29	$107,740,267.99	$32,993,076.00	32¼
1901	111,631,193.39	115,554,920.87	33,527,333.00	30⅛
1902	121,848,047.26	124,785,697.07	34,715,864.00	28½
1903	134,224,443.24	138,784,487.97	36,720,833.00	27½
1904	143,582,624.34	152,362,116.70	38,556,551.62	26⅞
1905	152,826,685.10	167,399,169.23	39,384,916.17	26⅛

In 1905 the expenditure for railway transportation, including R. P. O. and special facility, was $45,061,689.57, or 29½ per cent of the total receipts.

I desire now to discuss as briefly as I possibly can the law under which this pay is allowed in order that we may understand the bearing it has upon this special-facility pay and the other questions involved. The law of 1873, as my friend from Tennessee, Judge MOON, said, was passed more than a quarter of a century ago, but the fact that it automatically operates to reduce railway mail pay in general shows that the principle upon which it is based is a sound one. When the law was passed the following were the rates, and I shall insert a copy of that provision of the law in the RECORD: Rate allowable under the act of 1873, pay per mile per annum, 200 pounds, $50; 200 to 500 pounds, $75; 500 pounds to 1,000 pounds, $100: 1,000 pounds to 1,500 pounds, $125; 1,500 pounds to 2,000 pounds, $150; 2,000 pounds to 3,500 pounds, $175; 3,500 pounds to 5,000 pounds, $200; for every additional 2,000 pounds over 5,000 pounds, $25.

Mr. MURDOCK. Why did the sliding scale stop at 5,000 pounds?

Mr. STEENERSON. I will explain my views upon that subject in due time. It is a very pertinent question.

Mr. SIBLEY. Mr. Chairman, will the gentleman yield?

The CHAIRMAN. Does the gentleman yield?

Mr. STEENERSON. Yes.

Mr. SIBLEY. The gentleman gives this table. Of course he recognizes the fact that that was modified by the act of 1878.

Mr. STEENERSON. Oh, I will say that I will explain that in a moment.

Mr. MURDOCK. Well, while the gentleman is elucidating that, I wish he would keep in mind that the New York Central in 1874 had an average daily weight of 32,000 pounds. It has to-day an average daily weight of 411,000 pounds.

Mr. STEENERSON. I will come to that, and I am very glad the gentleman reminds me of it, because it is possible to forget it, although it is the very essence of my argument. I would say that these roads were reduced by the act of——

Mr. COOPER of Wisconsin. Will the gentleman just permit one question?

Mr. STEENERSON. Certainly.

Mr. COOPER of Wisconsin. The gentleman from Minnesota said that by the act of 1873 the Government was to pay $50 for 200 pounds. What does that mean?

Mr. STEENERSON. I will explain. It means the average weight of mail per day carried over the whole length of route. Now, suppose that the route is 50 miles long and you carry that mail over that route out and back.

Mr. COOPER of Wisconsin. Two hundred pounds.

Mr. STEENERSON. Two hundred pounds, up to two hundred, a hundred and ninety-nine, or a hundred and fifty. If you carry that mail both ways going and coming for three hundred and sixty-five days in the year, every day in the year, you are allowed $50, which I will say will amount to something like $2 per ton per mile.

Mr. FINLEY. Will the gentleman yield?

Mr. STEENERSON. Yes.

Mr. FINLEY. Right there in that connection will the gentleman state about what is the average distance which mail is carried?

Mr. STEENERSON. I have it on some papers in connection with another part of my argument, but if the gentleman will inform me I will be glad to state it now.

Mr. FINLEY. I am not sure that I can inform the gentleman from Minnesota, but I think it is about 428 miles.

Mr. STEENERSON. The gentleman from Wisconsin asked this question: What does that $50 mean? To earn that $50 I say you have to carry mail outward and back every day in the year. It means 730 times over that route.

Mr. COOPER of Wisconsin. Does that mean 200 pounds out and 200 back for $50 a year?

Mr. STEENERSON. Certainly; it is per ton per mile—it is ton mileage.

Mr. COOPER of Wisconsin. That was the privilege of the people, to carry that amount of mail for that money; but suppose, on certain particular roads out in the country, they did not average 10 pounds or 15 pounds a day instead of 200 pounds?

Mr. STEENERSON. The same rate of pay per pound would apply where you carry 10 pounds a day. It was reduced by the act of 1876 10 per cent, and by the act of 1878 it was reduced horizontally 5 per cent, but now——

Mr. COOPER of Wisconsin. What was the rate per ton per mile?

Mr. STEENERSON. I will tell you the rate per ton per mile. At the reduction of 15 and 10 per cent made by those two acts it was figured out——

Mr. LLOYD rose.

Mr. STEENERSON. Just excuse me a moment. It was figured out, and it made 171 cents per ton per mile. That is the highest rate for transportation of mail that is paid in the United States. Then, where the weight is more than 200 pounds, on this sliding scale, as you will observe, decreases the per ton mail rate until you reach an absolute quantity—that is, about 5.8 cents per ton per mile. Now I yield to the gentleman from Missouri.

Mr. LLOYD. In your statement a moment ago I understood you to say if they carried 199 pounds out and 199 pounds back they would get paid for carrying 199 pounds. Is it not a fact they would get paid for carrying twice 199 pounds, or 398 pounds?

Mr. STEENERSON. No; you get paid for the average weight over the whole route.

Mr. LLOYD. You get pay by adding the average mail carried out and the average amount of mail carried back?

Mr. STEENERSON. Yes; but you must understand it is as far going as coming. You may have a ton of mail, and it makes no difference whether you move it forward or back, it is ton-mileage rate.

Mr. McCLEARY of Minnesota. May I interrupt the gentleman?

The CHAIRMAN. Does the gentleman yield to his colleague?

Mr. STEENERSON. I yield.

Mr. McCLEARY of Minnesota. In your illustration in answer to the gentleman from Wisconsin a moment ago you used a route of 50 miles long. Suppose the route was 250 miles long; how would that affect your answer to the gentleman from Wisconsin?

Mr. STEENERSON. It has absolutely no effect whatever what the length of the route may be. The principle of this compensation under this act of 1873 operates equally so far as the length of route is concerned. The route is fixed by the Department for convenience in computation and in pay and for other facilities.

Mr. SAMUEL W. SMITH. Will the gentleman yield?

Mr. STEENERSON. Certainly.

Mr. SAMUEL W. SMITH. Can you tell what is the average price per pound for carrying the mail?

Mr. STEENERSON. The average per ton per mile?

Mr. SAMUEL W. SMITH. No; the average per pound.

Mr. STEENERSON. Yes; but that is so small I can not see that fraction, but I can tell you what it was in 1899, according to the statistician. It was figured out to be 12½ cents per ton per mile—that is, moving a ton of mail. That mail is costing to-day on an average of probably 10½ cents, but no man living could tell what the pay on the different roads would be unless you take it up, figure out the total number of pounds, and divide it by the amount paid.

Mr. SAMUEL W. SMITH. That is 12½ cents.

Mr. STEENERSON. Yes. That is the average given by Professor Adams for 1899.

Mr. SAMUEL W. SMITH. How would that compare with the freight rates of the country?

Mr. STEENERSON. The freight rates of the country were then about 1.29 cents.

Mr. SAMUEL W. SMITH. Now, do you think that difference is fair?

Mr. STEENERSON. I am not arguing in favor of placing the railway-mail pay on the same basis as paid for freight, although I am in favor of and, as I will show before I get through, I might perhaps be willing to reduce the railway-mail pay. I do not think it would be fair to require the railroads to carry the mail for the same price as is paid for freight on freight trains.

Mr. SAMUEL W. SMITH. Do you not think that is too wide—between that and 12½ cents per ton?

Mr. STEENERSON. That difference does not exist now; because of the density of the population and greater mail traffic the rate per ton per mile has decreased, and it is approaching about 10 cents now. The 12½ rate was in 1899. By the operation of the law of 1873 the rate has automatically gone down with the increase in density of mail.

Mr. SAMUEL W. SMITH. Is it not true under your statement that a cent per ton is too much on freight and that it is about five-eights of a cent?

Mr. STEENERSON. No; the gentleman is mistaken; the lowest freight rate per ton is seventy-two one-hundredths of a cent.

Mr. SAMUEL W. SMITH. I think that is correct. It is seventy-two one-hundredths of a cent.

Mr. STEENERSON. I think it is about seventy-five one-hundredths. The gentleman from Wisconsin [Mr. COOPER] knows.

Mr. COOPER of Wisconsin. About seventy-two one hundredths.

Mr. STEENERSON. That was in 1902, when you introduced your bill, and by reason of raising the classification in the country, the freight rate is now seventy-four one-hundredths of a cent.

Mr. FINLEY. I will call the gentleman's attention to this fact for information, that in the last few years there has been a slight increase in freight rates, and my recollection is that it is now about seventy-nine one-hundredths or seventy-eight one-hundredths.

Mr. STEENERSON. Yes; I believe there has been; but it is less than a cent per ton per mile for freight, and we pay the lowest rate on mail that we ever did. We pay 6 cents per ton per mile on the densest route, such as the New York Central. And it is impossible, I would say to the gentleman from Kansas [Mr. MURDOCK], to get a lower rate until we amend the law of 1873, and I will show later on in my argument the reason for that.

Mr. SAMUEL W. SMITH. Is it not a fact that the average passenger rate per mile is under 2 cents?

Mr. STEENERSON. I think it is less than 2 cents per mile, but I do not see what that has got to do with the exact question we are now discussing.

Now, I desire to call the attention of the House to the fundamental principles of this matter. I want to call attention to the fact that we have three kinds of compensation for transporting the mails. First, we have the law of 1873. The estimate in 1900 was that we paid on an average 12½ cents per ton per mile, and the lowest possible rate was 5.8 cents per ton per mile, according to the density of traffic. We have in addition to that pay for R. P. O. cars—railway post-offices, so called—and they are post-offices. The usual car to-day is 60 feet long and the weight 100,000 pounds. There is some dispute about its capacity. The supposed usual load is 10,000 pounds. That is 5 tons, and that is the heaviest load for the heaviest car. Ten thousand pounds out of 100,000 pounds is as ten to one, so that they are hauling very much less than their own weight. The freight car only carries about half as much dead weight as it carries freight. I think the 60,000-pound car—that is, 30-ton car—only weighs about 15 tons, so it carries twice as much as its own weight, whereas the R. P. O. car carries about one-tenth of its own weight. So, consequently, we can not expect the railroad companies will haul them at great speed around the country for the purpose of enabling the postal service to distribute the mail in them without a just compensation. We must remember that in these R. P. O. cars there is at least half of the space occupied by furniture and space for the clerks to distribute the mails. It is a moving post-office, where men are engaged distributing to the different places, and also to the different routes in the cities and the rural post-offices. That gives us expedition in the mails and is a great facility, and that is the function of our R. P. O. cars. For that reason Congress provided that for the 40-foot car we should pay $25 per mile per year.

Mr. SAMUEL W. SMITH. And is it not a fact that when that law was passed there was not a 60-foot car in Government use?

Mr. STEENERSON. I do not know. The R. P. O. pay for a 45-foot car is $25 per mile per year, and the R. P. O. pay for a 55 to 60 foot car is $50 per mile per year. I will insert the table furnished by the Post-Office Department:

Rates allowable per mile, per annum, for use of R. P. O. cars when authorized.

	Per daily line.
R. P. O. cars, 40 feet	$25
R. P. O. cars, 45 feet	30
R. P. O. cars, 50 feet	40
R. P. O. cars, 55–60 feet	50

To constitute a "line" of railway post-office cars between given points, sufficient R. P. O. cars must be provided and run to make a trip daily each way between those points.

SEC. 4002. The Postmaster-General is authorized and directed to readjust the compensation hereafter to be paid for the transportation of mails on railroad routes upon the conditions and at the rates hereinafter mentioned:

First. That the mails shall be conveyed with due frequency and speed; and that sufficient and suitable room, fixtures, and furniture in a car or apartment properly lighted and warmed, shall be provided for route agents to accompany and distribute the mails.

Second. That the pay per mile per annum shall not exceed the following rates, namely: On routes carrying their whole length an average weight of mails per day of 200 pounds, $50; 500 pounds, $75; 1,000 pounds, $100; 1,500 pounds, $125; 2,000 pounds, $150; 3,500 pounds, $175; 5,000 pounds, $200, and $25 additional for every additional 2,000 pounds; the average weight to be ascertained, in every case, by the actual weighing of the mails for such a number of successive working days, not less than thirty, at such times after June 30, 1873, and not less frequently than once in every four years, and the result to be stated and verified in such form and manner as the Postmaster-General may direct. (Act of March 3, 1873.)

No pay is allowed for apartments or space in baggage cars.

Mr. MURDOCK. I realize how carefully the gentleman has gone into this subject, and for information I should like to know if he has found out any reason why we should pay $25 per year for a 40-foot car and $50 per year, or double that amount, for a 55-foot car—namely, an increase of 15 feet in length, while we double the pay.

Mr. STEENERSON. I do not think there is any good reason. I think that the adjustment of railway mail pay is in that particular defective, and I say, further, I see no reason, if they pay $50 per mile per year for a 55-foot car, why they should not pay something for the compartment on a light route, where the Government does not pay a cent except for the weight and where the pay is very much less in proportion to the cost of the service. However, I mention this to show you that in al-

lowing extra pay per mile for R. P. O. cars we are paying the railroad companies for furnishing that space, and when we have paid it once I believe that is enough. Now, there are two kinds of pay, as we have seen so far: On a route that carries no R. P. O. cars, where they either carry the mail in the baggage car or have it in a compartment, there is no pay except the weight pay—the ton-mile pay. Where they furnish these palatial so-called "R. P. O. cars," there is this other pay that I have referred to.

Mr. SAMUEL W. SMITH. In the case of the R. P. O. car we are now paying both for the use of the car and per ton besides, are we not?

Mr. STEENERSON. We certainly are.

Mr. SAMUEL W. SMITH. Do you think that is right?

Mr. STEENERSON. I will explain to you why I think it ought to be changed; but I think the principle is correct, and that is all I am discussing now. When, for the dispatch of the mail, we require a large car, weighing ten times or twenty times as much as the load it carries, I think we ought to allow extra pay for doing that, and we have done it amply in the R. P. O. car pay.

But in addition to this, on one route from Washington to New Orleans we also allow $142,000 extra. That is extra pay in addition to these two kinds of pay that I have mentioned, and on the Atchison, Topeka and Santa Fe between Kansas City, Mo., and Newton, Kans., we allow $25,000 a year for the same purpose; so those two lines are getting three kinds of pay—three times over again, so to speak—whereas the other railroads in the country—the stepchildren, if I may so call them—only get one kind of pay, to wit, the per ton per mile rate.

Now, when we understand the principles upon which the law of 1873 was framed, I think we can also understand its limitations. The law of 1873 as amended (and, of course, the amendments cut no figure except that they reduce horizontally the amount of pay) was based upon this principle, that if you increase the density of the traffic you must decrease the compensation. It is based upon the well-known economic law of increasing returns. I believe the economists lay down the principle, There is a law of increasing returns, a law of constant returns, and a law of decreasing returns—that is to say, where you have a certain amount of fixed capital invested in any kind of business you may increase the business without increasing the expenses materially, and therefore you have increased returns. For instance——

Mr. COOPER of Wisconsin. Will the gentleman permit a question?

Mr. STEENERSON. Yes.

Mr. COOPER of Wisconsin. What is the total amount paid annually by the Government of the United States for the transportation of the mails?

Mr. STEENERSON. We have not got the figures for 1906, because we have not paid it all out yet. It will end next June.

Mr. COOPER of Wisconsin. What was the amount for the previous year?

Mr. STEENERSON. I can tell you the amount for 1905. The railway mail pay was $39,384,916, but if we include the R. P. O. pay and the special facilities pay it was $45,000,000.

Mr. COOPER of Wisconsin. The appropriation was $39,000,000.

Mr. STEENERSON. No; it was $39,000,000 without counting the R. P. O. pay and without counting the special facilities pay. To be exact, the expenditure for railway transportation of mail was $39,384,916.17. For R. P. O. cars it was $5,509,044.65.

Mr. COOPER of Wisconsin. Will the gentleman permit one more question?

Mr. STEENERSON. Certainly.

Mr. COOPER of Wisconsin. Thirty-nine million dollars represents 5 per cent on $780,000,000. Now——

Mr. STEENERSON. I decline to yield for the purpose of computation.

Mr. COOPER of Wisconsin. No; but does not the gentleman think it would be better for the United States to build and own its own postal cars and pay the railroads for hauling them? Would it not be more economical? I cite these figures to show the proper force of this question. Thirty-nine million dollars is 5 per cent on $780,000,000. It would not cost anywhere near that to make the postal cars that we need.

Mr. STEENERSON. I beg the gentleman's pardon. That question does not have any bearing upon what I was saying.

Mr. COOPER of Wisconsin. Suppose the United States was to build and own the postal cars; we could get them for very much less than the $45,000,000.

Mr. STEENERSON. I will state to the gentleman, with all due respect, that he is on the wrong track if he wants to reduce the cost of transporting the mail in that way, because if the Government owned the cars it would be more expensive than it is now. The way to reduce the cost of transportation is not in Government ownership of mail cars, unless the Government owns the railroads as well, in my opinion.

Now, Mr. Chairman, I desire to go on and explain the principle upon which the law is founded. I said that this law of increased returns could be well illustrated with a man having a hotel and running a bus. If he only carries one passenger from the depot to the hotel, it costs just as much as if he carries ten. The wear and tear on the tugs and the cost of axle grease would amount to but very little, but if he increased that load so as to fill his bus it may be that there is a limit. As long as he increases it to a proper load the law of increased returns without further investment applies. But the minute he increases the load so much that the horses have to stop and rest and it takes a longer time and it comes to be better that he have two rigs to carry the load, then he reaches the limit of the law of constant returns; and if he breaks down by too heavy loading, he soon reaches the law of decreased returns, so it would be better to furnish a new rig.

Now, the underlying principle of this law of 1873 is based upon this economic law, which has more application to transportation than to any other business. Congress sought to do justice in this regard. You will observe that under this law of 1873 the rate per pound per mile is twenty times greater where the weight of the mail is 200 pounds and under, and that the lowest rate is only 5.8 per ton per mile where it is over 5,000 pounds. But you will observe, gentlemen, that under this table the operation of this law stops at 5,000 pounds, as the gentleman from Kansas [Mr. MURDOCK] suggested a while ago.

Now, is there any reason for that? None has ever been discovered. If the law of constant returns could be arrived at or reached at 5,000 pounds, then there would be reason for stopping there; but even a novice in the principles governing the business of transportation will know that it is cheaper to carry 10,000 pounds in a load on a train, proportionately, than 5,000 pounds, and that you can not carry on an ordinary train even in postal cars 20,000 pounds without materially decreasing the expense of transportation. So that the defect in the law of 1873 is not that it allows too much pay for the light route, like the one in Michigan I referred to, but that it allows no reduction where the tonnage is heaviest, where the density of the traffic is great.

Now, I desire to follow this up with a brief reference to the so-called Postal Commission of 1898. That Commission was created by statute and was composed of members of the Senate and House. They asked for an extension of time; they took testimony all over the United States and sent one man to Europe to investigate postal conditions. They printed their testimony in three volumes; they employed Professor Adams, an expert, who rendered a very able report. Then they came to this conclusion—the majority of them joined in that report—that "we conclude that the charges for railway mail transportation are not excessive," and that is all that it amounted to; that they were not excessive. They never discussed the question as to whether or not it was fair to the light routes, fair or sufficient to the road where the density of traffic was greatest. They never sought to consider the question of equality of compensation in proportion to the cost of the service.

One of the gentlemen, a member of that Commission, was Mr. Moody, a Representative from the State of Massachusetts in this House, the present Attorney-General of the United States. He made a separate report, and I want to call the attention of the House to that report so far as it concerns the crucial question in this case. It should be remembered that the railway accountants and experts had testified quite universally that the maximum load upon the R. P. O. cars was 2 tons, or 4,000 pounds, and that the dead weight was even more than was compensated for by the R. P. O. special pay, and that therefore it could not be reduced. Now, the Department officials testified that 3½ tons was an easy load for an R. P. O. on an average, and that they have loaded as high as 5 tons. It further appears in testimony, which was ignored by that Commission, that some mail was carried on storage cars in these routes where the mail was carried by special train. Now, Professor Adams, after having spent months in figuring out the cost of the service, comparing it with freight traffic, with passenger traffic, and with express traffic, came to this conclusion: that if the load could be increased or actually had increased—that is, the average—then the pay on the dense routes was too much. I would say that the gentleman who made another report, Mr. Loud, went off on an idea of his own about discarding weight pay entirely and paying for space, and as that is so unusual an idea and confined to himself, so far as I know, it is not necessary to pay any attention to it. It would result in having large cars with nothing in them.

I desire to read somewhat from the report of Mr. Moody. You will observe that the report made by Mr. Moody reviews the evidence of Mr. Adams and he says that the whole question turns upon the size of the load, so that under the operation of the economic law of transportation of increasing returns they carry it very much cheaper if they carry 3½ tons per car than if they carry 2 tons per car.

Mr. FINLEY. Mr. Chairman, will the gentleman permit an inquiry?

The CHAIRMAN. Does the gentleman yield?

Mr. STEENERSON. Certainly.

Mr. FINLEY. Right in that connection, does not the gentleman think that it is a matter of administration in the hands of the Department if the loads are lighter than they should be?

Mr. STEENERSON. Oh, no; not at all. The gentleman is entirely mistaken, as I shall show in a little while. The Department does not control the load.

Mr. FINLEY. Would it not control it in this sense, in providing more in the way of R. P. O. lines than was necessary?

Mr. STEENERSON. They never get any more R. P. O. cars than they need, because that question has to do with the dispatch of the mail, and the American people desire to have their mail fast. The dispatch of the mail is the controlling question.

Mr. FINLEY. If an R. P. O. car is only half loaded—has half as much mail as it should carry—then does not that increase the cost and expense to the Government?

Mr. STEENERSON. No; I should say not; not railway mail pay. I desire now to read an extract from the report of Mr. Moody, and I ought to say first that Mr. Adams recommended a reduction in railway mail pay under the law of 1873. It is as follows:

Some attention must now be directed to the report of Mr. Adams, and the recommendations which it contains. The existing law prescribing railway mail pay automatically lowers the rate on any given route as the volume of traffic increases. Mr. Adams shows that by the normal effect of this law the rate per ton per mile is $1.17 when the average daily weight of mail is 200 pounds, and, decreasing with the increase of volume, it becomes 6.073 cents when the average daily weight is 300,000 pounds. Under the operations of this law the average rate per ton per mile has decreased from 26.42 cents in 1873 to 12.567 cents in 1898. Beginning with 1880, the first year in which all the statistics are available for comparison, passenger rates have decreased 21 per cent, freight rates 44 per cent, and mail rates 39 per cent. This would seem satisfactory were it not for the facts that during the same period the passenger mileage of passengers increased 233 per cent, the ton mileage of freight 353 per cent, and the ton mileage of mail 579 per cent, and that there had resulted large concentrations of mail on certain routes.

Applying to these facts the fundamental law of transportation, that the cost per unit of transportation decreases as the density of the traffic increases, Mr. Adams declares that they indicate that there should have been a decidedly greater fall in mail than in passenger or freight rates. He is led at once to the inquiry whether the rates upon the routes where there is the greatest concentration of mail are not excessive. The rule of transportation invoked is based upon the assumption that the increase of traffic permits the introduction of increased economy, and notably the economy which results in so loading cars that the ratio of dead weight to paying freight is decreased.

Yet this economy is precisely what our method of transporting mail denies to the railroads. Instead of permitting the mail cars, whether apartment or full postal cars, to be loaded to their full capacity, the Government demands that the cars shall be lightly loaded, so that there may be ample space for the sorting and distribution of mail en route. In other words, instead of a freight car, we exact a traveling post-office. The modern 60-foot postal car weighs from 80,000 to 100,000 pounds. It is clear that if but 2 tons of mail are carried upon it, all the economies which result from densities of traffic upon the route are lost. This is true, although the extra pay for running the postal car is about equal to the pay for a ton of mail.

Mr. Adams recognizes clearly the effect of these facts working against the normal operation of the fundamental law of transportation under consideration. He is apparently of the opinion that if the facts are as they are claimed to be, namely, that on an average but 2 tons of mail are loaded on a postal car, and apartment cars are loaded in like proportion, the pay ought not to be reduced. Nevertheless, with this concession, he recommends a reduction of pay on the dense routes by extending the principles of the existing law, so that all routes carrying in excess of 5,000 pounds per day shall be subjected to a progressive reduction of from 1 to 12 per cent. This would effect a saving of something over a million dollars per annum. It has been suggested that there is an inconsistency between the opinion and the recommendation. I am anxious not to misrepresent Mr. Adams's views and conscious that I may do so. But, as I understand them, there is no inconsistency. He makes the recommendation in spite of the opinion, because he is unwilling to accept without further inquiry the hypothesis in respect to the loading of cars which has been pressed upon us. He is also unwilling to accept without further inquiry the present method of loading as a finality.

Now, if the Chairman pleases, the whole turning point is here. If the load of the R. P. O. car or carload was as estimated by the railway officials, then the pay is not too great. Now, I desire to read from Mr. Adams's figures as to the result.

He compares the express and mail business on the New York Central between New York and Buffalo, a distance of 439 miles, with the following results:

Railway charge for a ton of mail	$31.73
Railway charge for a ton of express	12.50
Railway charge for 100 pounds of mail	1.586
Railway charge for 100 pounds of express	.625
Railway charge per ton per mile for mail	.0723
Railway charge per ton per mile for express	.0285
Railway earnings per annum for 125 tons of mail daily	1,447,840.41
Railway earnings per annum for 125 tons of express daily	570,312.50
Railway earnings per annum per mile of line for 125 tons of mail daily	3,298.04
Railway earnings per annum per mile of line from 125 tons of express daily	1,299.12

My judgment is that the application of the statute of 1873 to the present conditions under which mail is carried results in overpayment upon the dense routes.

This conclusion is reached by a comparison of mail compensation upon any route exceeding 150 or 200 miles with railway compensation for carrying express matter or first-class freight.

In this comparison the railway has been allowed 50 per cent of the total charge for express instead of 40 per cent, which is the contract rate. It is further shown in the report that the Pennsylvania Railroad carried daily an average weight per mile of 300,000 pounds of mail, or 150 tons, and received an annual compensation of $3,422 per mile of line. The question arises, Can the Pennsylvania Railroad afford to carry the mail between New York and Philadelphia for less than $3,422 per mile of line, or $93.75 per mile of line per day? The answer depends primarily upon the manner in which the freight is to be moved. If we assume that this mail is to be carried by postal cars, with about 2 tons in each, it is doubtful if the railroad could afford to render the services more cheaply; but, on the other hand, should the cars be loaded with, let us say, 3½ tons of mail, the railroad company operates on a margin of profit that warrants a reduction of pay. The calculation upon which the above conclusions rest is as follows: At 2 tons per car, 150 tons of mail demand that seventy-eight cars be passed over each mile of this route daily. Seventy-eight cars would make eight trains.

"The average cost per train mile, all operating expenses being taken into account on all trains, is a little under $1, but we will call it $1. The New York Central gives the rate per passenger train per mile at 73 cents. This would make $8 per mile per day chargeable to operating expenses. If to this were added 33 per cent for fixed charges and dividends, improvements chargeable to income, investments and the like, we should have $10.40 per mile, which multiplied by 365 would give us $3,796 per mile per year from mail service. This you will notice is in excess of the amount which this route actually receives. If now the assumption be changed and each car be loaded with 3½ tons instead of 2 tons of mail, a similar computation shows by the rate we expend for this mail service an annual sum per mile of line of $2,427.25. Were it possible to load 5 tons to a car the expense would be $1,533 per mile of line."

A careful examination of the testimony produced before the Postal Commission, as well as of Professor Adams and the other witnesses, including Department officials, does not justify the conclusion that the maximum load of mail in a postal car is only 2 tons.

The CHAIRMAN. The time of the gentleman has expired.

Mr. OVERSTREET. May I ask my colleague if he would like a few minutes more?

Mr. STEENERSON. I would like to have a few minutes more.

Mr. OVERSTREET. I yield fifteen minutes more time to the gentleman.

Mr. STEENERSON. I thank you. Now, the Department officials testified before the Postal Commission that the load of 3½ tons was an easy load, and Mr. Adams was aware that experts of the railroads testified it was 2 tons, and the Postal Commission decided, I presume on the weight of the evidence, that it was 2 tons, and Mr. Moody, in this report I have read, agreed that there ought to be further inquiry on that point, as Mr. Adams recommended, and agreed that a further investigation of that question should be made. We took pains before the Post-Office Committee to inquire as to the load, but we got no special satisfaction out of the Department officials. They stated before the Post-Office Committee that the weights and loads were not kept separately and they would try to furnish the information later, but it does not appear in the bound copy here.

Mr. SAMUEL W. SMITH. Mr. Chairman, I would like to ask the gentleman, has the Post-Office Committee sought to carry out the recommendations of the Commission to which the gentleman referred?

Mr. STEENERSON. I should say Congress had sought to carry out the recommendations of the Commission, because the Commission recommended that nothing be done. They said the railway mail pay was not excessive.

Mr. SAMUEL W. SMITH. You do not claim that by the various reports.

Mr. STEENERSON. That is not unanimous, but it is the

report of the majority of the Postal Commission, with only one member reporting in favor of a reduction. I say the evidence before them would have justified, if not required, a report that the pay upon the dense route was excessive, and they should have made a recommendation that it should be reduced. I think the evidence now before us justifies us in amending the law, as I shall suggest. Now, I was so anxious to have this House understand this point that I sent down to the Post-Office Department and asked them, since they had not furnished the committee with the information they promised, if they would not from the weigh sheets give us the information on that point as to what the load in the postal car was, and I got a letter yesterday from the Second Assistant Postmaster-General, which I desire to have the Clerk read in my time.

The CHAIRMAN. The Clerk will report the letter.

The Clerk read as follows:

POST-OFFICE DEPARTMENT,
SECOND ASSISTANT POSTMASTER-GENERAL,
RAILWAY MAIL SERVICE,
Washington, April 4, 1906.

Hon. HALVOR STEENERSON,
House of Representatives, Washington, D. C.

SIR: Replying to your several inquiries in regard to the relative weight of mails carried in storage cars and distributing cars on exclusive mail trains, I regret that we can not give you just the information you call for, because in weighing mails we have never kept the weight carried in a storage car separate and apart from that carried in a distributing car on the same train, nor would it be practicable, as mail is being constantly shifted from one car to another in the process of distribution.

Taking all of the trains that carry storage cars as well as distributing cars on what might be termed "exclusive mail trains"—although that term is to some extent a misnomer, because there are probably not more than two or three trains in the country that are made up exclusively of mail cars, there being usually one or more express or baggage cars, or possibly a passenger car or sleeper—we find that on such trains we have forty-eight distributing cars as against twenty-six storage cars. The weight of mail carried in storage cars, as well as in distributing cars, fluctuates very much. We recently had a report showing that 47,000 pounds was carried in a storage car, but the average weight will probably run from 20,000 to 30,000 pounds. The average amount carried in a distributing car will probably run from 5,000 to 8,000 pounds.

On the transcontinental trains, as well as all other through trains, the mail in the storage car does not, as a rule, go through intact from one end to the other. It is usually distributed en route, the undistributed mail being taken from the storage car into the distributing car to be worked, its place in the storage car being taken by through mail that has already been distributed.

Very respectfully,
W. S. SHALLENBERGER,
Second Assistant Postmaster-General.

Mr. STEENERSON. Now, it will be seen that the question of the load is materially affected by whether or not they are carrying mail on storage cars, because a storage car's ordinary capacity is 45,000 pounds, or 22½ tons. If they carry two storage cars and three R. P. O. cars in a train, the average carload would be increased to at least 5 tons instead of 3½ tons, which would justify a reduction on such a route of more than 50 per cent on railway mail pay. If we assume that this mail is to be carried in postal cars of about 2 tons each it is doubtful if the railroad could afford to render the service any more cheaply. On the other hand, should the cars be loaded, let us say, with 3½ tons as an average load, the railway company operates on a margin of profit of more than 100 per cent, and that warrants a reduction in pay.

Mr. SMALL. May I interrupt the gentleman?

Mr. STEENERSON. Yes.

Mr. SMALL. I understand the gentleman to say that in his opinion the charges for railroad transportation are not excessive upon small roads or where the amount of mail matter carried is comparatively small in quantity?

Mr. STEENERSON. I do not think it is excessive on light routes where they carry mail in apartment cars and baggage cars, but excessive where they have special mail trains, and I can prove it.

Mr. SMALL. Where the amount of mail carried is large in quantity?

Mr. STEENERSON. Yes; it is all regulated by the density.

Mr. SMALL. The remedy you have would be in a horizontal reduction in rates?

Mr. STEENERSON. No, sir.

Mr. SMALL. Then what remedy has the gentleman to offer?

Mr. STEENERSON. The remedy is, instead of stopping reduction at the 5,000 pounds, as is now the law, I would carry on the reduction to the load of 15,000, 20,000, 60,000, 150,000, and 300,000 pounds. If you extend the operation of this law so that the pay is reduced as weight increases, in proportion to the increase in the density of traffic, you will arrive at a just rate for carrying the mail. Professor Adams recognized this, and pointed it out in his report as follows:

In the appendix to this report will be found a computation showing the normal effect of the law of 1873, as influenced by a constantly increasing amount of mail traffic. It begins with an average daily weight of mail of 200 pounds, which is the smallest amount specifically provided for in the law, and carries the computation to an average daily weight of 300,000, which is a little less than the weight carried in the railway mail system as at present operated. The summary shows the rate per ton per mile, as also the pay per mile of route per annum, for a series of assumed weights between the two extremes named. Thus the rate per ton per mile, for a mail route with an average daily weight of 200 pounds, is $1.17; the rate per ton per mile of mail for a mail route with an average daily weight of 300,000 pounds is 6.073. These weights, it should be remembered, are exclusive of the amount charged as payment for postal cars. The pay per mile of route per annum over a road carrying 200 pounds of mail daily is $42.75. The pay per mile per annum over a route carrying 300,000 pounds daily is $3,325.12. These statements indicate the broad margin over which the law operates. This summary is of great assistance in the study of the problem of railway mail pay, because it shows at a glance the rate per ton per mile paid, as well as the pay per mile of route, for any assumed weight. The actual rate paid under the law can never drop below $5.856, no matter how great an increase in the weight of the mail carried. The curve of pay under the law on the diagram will be found in the appendix, and is a parabolic curve; it ever approaches but can never reach the base of rate. To criticise the law before ascertaining the conditions under which it works will be premature, but it may be remarked that the above statement of the law prepares one for the conclusion that it too quickly reaches the limit of any practicable reduction of the rate for increase in the volume of traffic. It may have fitted well into the conditions which existed in 1873, but it needs to be revised in order to properly adjust itself to the conditions of the present time.

Summary showing rate per ton and revenue per mile under the law of 1873.

Average weight of mail carried over entire route per day.	Rate per ton-mile of mail.	Pay per mile of route per annum.	Average weight of mail carried over entire route per day.	Rate per ton-mile of mail.	Pay per mile of route per annum.	Average weight of mail carried over entire route per day.	Rate per ton-mile of mail.	Pay per mile of route per annum.
Pounds.			*Pounds.*			*Pounds.*		
200	$1.17123	*$42.75*	2,400	$0.30651	$134.25	20,000	$0.09113	$332.62½
250	1.02466	46.75	2,500	.29863	136.25	21,000	.08924	342.00
300	.92394	50.75	2,600	.29138	138.25	22,000	.08817	354.00
350	.85714	54.75	2,700	.28260	139.25	23,000	.08657	363.37½
400	.80479	58.75	2,800	.27642	141.25	24,000	.08570	375.37½
450	.76408	62.75	2,900	.27067	143.25	25,000	.08433	384.75
500	.70274	*64.12½*	3,000	.26347	144.25	30,000	.08027	439.50
550	.65878	66.12½	*3,500*	.23425	*149.62½*	35,000	.07697	491.62½
600	.63128	69.12½	4,000	.21592	157.62½	40,000	.07485	546.37½
650	.59958	71.12½	4,500	.20167	165.62½	45,000	.07288	598.50
700	.58023	74.12½	*5,000*	.18740	*171.00*	50,000	.07159	653.25
750	.55616	76.12½	5,500	.17634	177.00	55,000	.07027	705.37½
800	.54195	79.12½	6,000	.16712	183.00	60,000	.06942	760.12½
850	.52297	81.12½	6,500	.15933	189.00	65,000	.06847	812.25
900	.51218	84.12½	7,000	.15059	192.37½	70,000	.06787	867.00
950	.49315	85.50	7,500	.14493	198.37½	75,000	.06715	919.12½
1,000	.46849	*85.50*	8,000	.13938	204.37½	80,000	.06670	973.87½
1,100	.45081	90.50	8,500	.13562	210.37½	85,000	.06614	1,026.00
1,200	.43607	95.50	9,000	.13014	213.75	90,000	.06580	1,080.75
1,300	.42360	100.50	9,500	.12675	219.75	95,000	.06534	1,132.87½
1,400	.41232	105.50	10,000	.12370	225.75	100,000	.06508	1,187.62½
1,500	.39041	*106.87½*	11,000	.11712	235.12½	125,000	.06372	1,453.50
1,600	.38313	111.87½	12,000	.11284	247.12½	150,000	.06290	1,722.00
1,700	.37671	116.87½	13,000	.10811	256.50	175,000	.06224	1,987.87½
1,800	.37100	121.87½	14,000	.10509	268.50	200,000	.06182	2,256.37½
1,900	.36590	126.87½	15,000	.10151	277.87½	225,000	.06142	2,522.25
2,000	.35137	*128.25*	16,000	.09927	289.87½	250,000	.06117	2,790.75
2,100	.33725	129.25	17,000	.09645	299.25	275,000	.03090	3,056.62½
2,200	.32690	131.25	18,000	.09475	311.25	300,000	.06073	3,325.12½
2,300	.31745	133.25	19,000	.09247	320.62½	Limit.	.05856	----------

NOTE.—The average weights and amounts of pay per mile per annum in italic figures are explicitly prescribed in the laws mentioned; the others are computed from these according to the weights prescribed by the Postmaster-General as warranting the addition of $1 to the annual pay per mile, these weights being 12 pounds where the daily average weight of mail is between 200 and 500 pounds, 20 pounds where the daily average weight of mail is between 500 and 1,000 pounds, 20 pounds where the daily average weight of mail is between 1,000 and 1,500 pounds, 20 pounds where the daily average weight of mail is between 1,500 and 2,000 pounds, 60 pounds where the daily average weight of mail is between 2,000 and 3,500 pounds, 60 pounds where the daily average weight of mail is between 3,500 and 5,000 pounds, 80 pounds where the daily average weight of mail is above 5,000 pounds. Amounts not warranting the addition of an entire dollar are neglected.

The laws prescribe that for each additional 2,000 pounds above 5,000 pounds there shall be paid $21.37½ per mile of route per annum.

I have already referred to the report of the Postal Commission on the general subject of railway mail pay, but the report also considers special-facility pay, and six out of eight members of that Commission, including Senators Wolcott, ALLISON, and Chandler and Representatives Moody, Loud, and Fleming, are unanimously opposed to special-facility pay and recommend its discontinuance. Senator MARTIN and ex-Representative Catchings disagree upon the ground that there was discretion in the Postmaster-General to expend it or not, but they do not attempt to justify it. Postmaster-General Wanamaker, as long as November 30, 1891, declined to include this in his budget for the following year, the reason given being that such an appropriation was not necessary and created dissatisfaction upon the part of other roads not receiving the benefits. Again on February 25, 1892, Postmaster-General Wanamaker, in a letter to the chairman of the Committee on Post-Offices and Post-Roads, stated:

The continuance of special-facility allowance has for some years past been a source of much annoyance to the Department, and has

hampered the best interests of the mail service, because railroads operating in contiguous territory, and to some extent paralleling the roads which receive the extra pay, object to rendering equally good or quicker schedule mail service except they be paid corresponding rates.

Since that time no Postmaster-General, so far as I can find, has recommended this item. The present Postmaster-General, on page 9 of his annual report for this year, recommends against this item. He says:

Curtailment has been recommended wherever possible, and many decreases are shown, of which the following are examples: Railway transportation, special facilities, $167,728.25.

At the hearing before the Committee on Post-Offices and Post-Roads General Shallenberger testified:

That this line from Washington to New Orleans, including the Southern Railway, the Western Railway of Alabama, and the Louisville and Nashville, received $1,003,940.09 for transportation, $223,947 for R. P. O. cars, and $142,728 subsidy, less certain deductions amounting to $33,861.31.

Then he was asked these questions:

Q. Do you want this money or not?
A. We are not asking it nor expressing an opinion in reference to it.
Q. What is the reason that you all are silent on that question?
A. We are not silent.
Q. You say you do not ask it?
A. We do not estimate for it.
Q. And what is the reason you do not ask it?
A. Because we think that the effect upon the service or route is better if we do not select any particular route in any particular section for special favors.
Q. Then you do not select it because you think it is a bad example and that it affects the railway mail service elsewhere by giving this subsidy?
A. That is the situation.
Q. So you think that for the good of the service the thing ought not to be done, taking the country at large?
A. I think that for the good of the service at large that no special favors should be given to any one particular road or system.

The gentleman from North Carolina [Mr. SMALL], as well as other gentlemen, have asked me what my remedy is. My answer is: The post-office establishment of the United States is a business institution engaged in transportation, and is subject to the recognized economic laws governing that business. Uncle Sam has a large "plant," if we may so call it. He has 68,000 postmasters, 30,000 city carriers, 35,000 rural carriers, 13,200 railway mail clerks, and other employees in the postal service, making a grand total of 280,000. He has millions of dollars invested in buildings and equipment. He could probably increase his business without incurring a proportionate increase in expenditures even under the law governing railway pay as it now is, but he certainly could do so if it was modified as suggested by Professor Adams, and as seems to be justified by the changed conditions relative to size of load now carried on special mail trains. Should we simplify the classification of mail and consolidate third and fourth class matter, as recommended by the Postmaster-General, I believe it would result in very largely increasing our business and lowering our proportionate expenditures. I do not believe you would make anything by raising the rate on second-class matter. It is carried at a loss, it is true. Mr. Newcomb's book on the Postal Deficit gives his figures as to the distance at which mail of the different classes is carried at a loss. He points out that at 2 cents an ounce the rate per ton is $640, regardless of distance. If we pay 35 per cent of this for transportation, it will be $224, and divide this by 12.567 cents, the average rate at that time, gives 1,782 miles as the maximum distance it can be carried without loss. But he further contends that the postage actually received averages 85.6 cents per pound for first class, because of the fact that nearly all letters weigh much less than 2 ounces, so that first-class mail can actually be carried 4,768 miles without expending more than 35 per cent of the receipts.

The table is as follows:

	As given by Professor Adams.	The correct figures.
	Miles.	*Miles.*
For first-class mail	1,782	4,768
For second-class mail	56	45
For third-class mail	446	819
For fourth-class mail (ordinary)	891	947
For fourth-class (seed, etc.)	----------	512
For foreign mail	----------	2,562
For postal cards	----------	10,483

Now, if we actually receive $1,712 for every ton of first-class mail, that is certainly a very profitable part of our business. It is the policy of all engaged in the management of transportation enterprises to recognize public necessity, as it is called. The railway manager first determines how much revenue is required to pay operating expenses, interest on bonds, and dividend. Then he distributes this burden upon the different items or classifications of traffic as may best be able to bear it. The cheap coal, which is a necessity to the development of the region he serves, but which is very bulky, he must carry cheaply, even at a slight loss; but the silks, jewelry, clothing, and similar goods of high value must pay a larger share and a large profit. It costs nearly as much to move a ton of coal as a ton of silk, but if the prices were the same there would be no business, and the railroad would be worthless.

The development of the country and prosperity of its people is so closely identified with the prosperity of the transportation company that it is often said they must go up and down together. So it is wtih the business of the postal service. Primarily, it was established for the transmission and distribution of intelligence among the people. To raise the rate on second-class mail would be an additional tax on such distribution, and, as the diffusion of intelligence is a fundamental condition of the social well-being and industrial development and evolution of the people, it would seem to be an unwise thing to do. Not only would it be unwise from the viewpoint of public welfare, but it might result in actual business loss to the postal service. A newspaper or magazine may be carried at a loss of a cent or two, but if that same newspaper or magazine brings into the mail two or three or a hundred letters, paying us at the rate of 85 cents per pound, the loss is many times made up. If the result should be that fewer such periodicals would circulate, and there would be a corresponding loss in first-class mail, the raising of second-class rates would not even be good business policy. So I came to the conclusion that the remedy lies in amending the law of 1873 so as to extend the gradual reduction of rates in proportion to increased density beyond the 5,000-pound limit, and then, by revising our rates and classification, seeking to increase the business of the postal service and its usefulness to the people. That is my remedy. If I should offer such an amendment, it is liable to be ruled out on a point of order. I hope no such point will be made. But I must return, before concluding, to this item of special-facility pay, which we may strike out without conflicting with the rules.

I went down and looked at that train on the Southern Railway, which starts from Washington at 8 a. m., last Monday. While it was quite an effort to be up as early as 8 o'clock, we have had so many conflicting statements about it that I thought I would go and see for myself. That train on Monday was composed of three R. P. O. cars and one storage car and one express car.

Mr. JOHNSON. What do you mean by a storage car?

Mr. STEENERSON. A 60-foot car that is filled with mail sacks. Its capacity is 45,000 pounds—22½ tons. Everything about it is the same as a freight car, and no difference whatever between a freight car carrying freight and a freight storage car full of mail, except that it moves in this mail train. I asked the man in charge of that train—I will say right here they treated me most politely, for I believe they took me for the president of the Southern Railroad. [Laughter.] They told me that Monday was the lightest day for mail, and that on other days of the week they had two storage cars in that train, three R. P. O. cars, and an express car. Until it reaches Atlanta it carries no passengers, but when it reaches Atlanta passenger cars are attached, and instead of running 42 miles an hour it comes down to 35 miles, the ordinary speed for a passenger train. Now, then, that condition of the mails, with 40,000 pounds in the two storage cars and 10 tons in the three R. P. O. cars, makes 60,000 pounds in the three cars—30 tons of mail. They probably had 50 tons including the express car. Assuming that they get the lowest price—which is not correct; but I will assume now they get the price on the densest route, 6 cents per ton per mile—if they had 50 tons they get $3 per train mile, whereas the cost of operating a railroad train of that class was $1. If, therefore, the Southern Railroad carries mail from Washington to New Orelans in storage cars and R. P. O. cars, with an average load of 10 tons per car in the train, they receive in weight pay alone three times what it costs to run it.

But that is not all. We pay them for the special facilities, and for the R. P. O. cars besides, and the reason for this is they say that it traverses a sparsely settled country. They say that it traverses the new and undeveloped pioneer States, where the settlers are living, I suppose, in shacks upon the prairies; such new and undeveloped States as Virginia, such young Commonwealths as the magnificent State of Tennessee, which produces such splendid specimens of manhood as my friend Judge MOON. It traverses the State of South Carolina, the State of North Carolina, the State of Alabama, the States of Georgia and Louisiana. These, they claim, are new, sparsely settled States, and are therefore entitled to special favors.

It will be observed, if you look upon the map of the United States, that that route parallels the Atlantic coast; that there are several other railway lines in the same direction, only a few miles apart. There is the Seaboard Air Line, there is the Atlantic Coast Line, there is a railroad traversing almost every part of that country, and yet they say that because the conditions are different in the oldest and most prosperous sections of the United States, therefore we, out on the praries, in Dakota and Montana and Washington, where the snows are deep in the winter and the weather is cold, and the difficulty of operating railroads is great—that we ought to be content with ordinary mail pay, where the traffic is light, but that there, in the garden spot of the world, it must be subsidized. [Applause.]

The CHAIRMAN. The time of the gentleman has expired.

Mr. STEENERSON. I regret very much that I can not have a little time for a peroration.

Mr. OVERSTREET. Does the gentleman want three minutes?

Mr. STEENERSON. Thank you, I would like to have it.

Mr. OVERSTREET. I yield three minutes to the gentleman.

Mr. FINLEY. Will the gentleman allow me?

Mr. STEENERSON. I will take the time to accommodate my friend from South Carolina.

Mr. FINLEY. The gentleman spoke about this being a sparsely settled community through which this railroad runs from Washington to New Orleans. I should like to ask him this: Does he think the fact that the Southern Railway is double-tracking its line from Washington to Atlanta, Ga., is any proof of the fact that it is a sparsely settled community?

Mr. STEENERSON. Judging by the reasoning that underlies this appropriation, I think that should be considered a signal of distress. [Laughter.]

Mr. GAINES of Tennessee. But we are giving them a big subsidy all the same.

Mr. MEYER. Will you yield to me for a question?

Mr. STEENERSON. Yes; I yield to the gentleman.

Mr. MEYER. Mr. Chairman, is not the gentleman aware of the fact that some years ago the Seaboard Air Line had this contract to carry this fast mail, and gave it up because they found it was not remunerative and they could not afford to do it?

Mr. STEENERSON. I am not aware of what any other railroad did, but I am aware of the fact that the most profitable business that the Southern Railway has or ever will have is the carrying of that special train of mail loaded in storage cars. [Applause.]

I should like to say to my friend from South Carolina that I rejoice in the development of the South. There is not a man upon the Republican side or in the Northern States who has not taken the greatest pride in the wonderful development of the Southern States in the last few years. We all have read of the New South, and we all have seen the magnificent Representatives that the New South is sending to this House, and we are glad of it. [Applause.] We rejoice in your good fortune, for in no part of the United States has that infallible evidence of prosperity, the transportation of the mail, shown such an increase and such advancement as in the Southern States.

It has increased most wonderfully in those very States, and there is no section of the country where the development has been so uniform and so continuous in the last decade. And there is no part of the United States where a mail subsidy is so little needed. [Applause.] I will say right here that it is not needed anywhere, because, even if the railway mail pay is not sufficient to be compensatory, the public necessity requires all railroad companies for the common benefit to carry it. They are interested in the development of their own territory, and they will carry it at the rate of pay that we prescribe.

But, I say, let us extend the operation of the law of 1873 in principle beyond 5,000 pounds, and strike out the subsidy outrage, and we will have a just, fair compensation to the railroads, and the American people will be satisfied. [Loud applause.]

Mr. OVERSTREET. Mr. Chairman, the gentleman from Iowa [Mr. HEDGE], a member of the Committee on the Post-Office and Post-Roads, has prepared an argument upon the subject of railway mail pay. I have the manuscript of his speech. The gentleman was suddenly called to his home by the death of a son. I ask unanimous consent that his speech, the manuscript which I now have in my hand, may be printed in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. HEDGE. What is the railroad mail pay? The railroad mail pay is not a matter of guess. The present law was the result of careful scientific study of the subject by able and honest officials of the Post-Office Department, acting in the interest of the Government. It was adopted in 1873 in place of the haphazard system of 1845, which was full of discretions, under which railroads were paid by favor largely and without much regard to the services rendered. The system of 1873 was devised by these Department officials, as the record shows, without any conferences with or cooperation of the railroads, and was criticised and opposed by the railroads almost from the beginning, especially regarding the pay allowed for providing and hauling post-office cars, which contemporary correspondence shows clearly.

The system for paying railroads for carrying the mails is based chiefly upon weight, and any consideration of the subject will show that weight ought to be the basis if the Government is to have adequate protection in the matter. The space occupied in the cars by the mails, as the system has developed, is a predominent element, it is true, but to pay for it as space, measured as space, would introduce an element of discretion and uncertainty which might result very unfavorably to the Government. Comparing the space now required and used in all cars for the mails with the space used and occupied on passenger trains by express matter and by passengers, it would be easy to evolve a schedule based upon "space" under which the present pay to railroads would be doubled for the same service they now perform. Nobody wants to take the risks of that. The payment for furnishing and hauling post-office cars is partly a recognition of space, but is more in the nature of compensation for providing a great convenience, the traveling post-office, at a low haulage rate of 5 cents per car mile hauled. It is undoubtedly true that, as a matter of principle and consistency, apartment cars ought to be specially compensated for in addition to the weight payment, but they are not.

THE WEIGHT PAYMENT.

The payment to railroads for weight of mails carried was established upon a graduated scale, which must be accurately understood in order to determine its merits. It recognizes two extremes, and if these are clearly kept in mind it is easy enough to know the rate of payment for all routes and all classes of the business.

MAIL PAYMENT ON THE SMALL ROUTES.

The pay begins with 200 pounds. It is measured over what are called "routes." These routes vary in length from 6 to 400 miles. The Post-Office Department establishes a route—that is, determines between what two stations upon a railroad it will establish a mail route. Then, if the business upon a route is very small, it falls in the lowest class, namely, the route carrying 200 pounds or less of mail a round trip over the line each day. The pay over such a route was originally fixed at $50 per mile of railroad per year.

Suppose that the route is 10 miles long, the pay for that service would, of course, be $500 per year, and a round trip for 365 days being 730 trips yearly, the compensation of that road would be 68½ cents per trip under the original law. But this has been twice reduced by Congress, so that, instead of $50 per mile, it is now $42.75, which for 10 miles is $427.50 per year, or 58½ cents per trip. If there is one intermediate town on this route, and therefore three towns are served with mail, the pay of this railroad is 19½ cents per town. If there should be two trains each way over that route, and therefore four mails daily, the pay would be 9¾ cents for each mail service at each town, and so on, depending upon the number of times each day the mail is served at that town. There are hundreds of these small routes—carrying 200 pounds or less—where the pay ranges from 3 to 8 cents per mile of service, and from 15 to 20 cents per town served daily with mail, and from 9 to 17 cents for each complete delivery of a pouch, or two pouches of mail from train to post-office, depending altogether upon the number of deliveries each day. On some small routes there are six deliveries. Now, what is this service worth? Upon these small routes, on the average, it costs the Government less than 4 cents per mile of service. The cost of the star route is officially reported as 6.5 cents per mile of service and rural free delivery costs 10.6 cents per mile of service. But the cost "per ton" and "per pound" on these small routes as upon star routes and rural free-delivery routes sounds very high. Carrying 200 pounds daily is, of course, 36½ tons yearly, and the pay being $42.75 per mile per year, we pay, therefore, on the small routes $1.17 per ton per mile, com-

pared with only 6 and 7 cents per ton per mile on the heavy routes. But no one would think of estimating the value of the star route or rural free service at so much per ton or per ton per mile. It is a question of service, requiring a man's time, his team, and equipment to handle a very small weight of mail. It is not weight, but service. In the same manner, the service upon all the small railroad routes should be considered. The railroad companies furnish a railroad; they assume responsibility for each pound of mail; it is registered or receipted for by each man who handles it; the messenger service, in many cases, exceeds the entire pay. It is a quicker service and in every respect a more satisfactory service for the Government than is performed by either the star route or the rural free, and the cost to the Government per mile of service rendered is about one-half that paid in either of the other branches.

MAIL PAY ON HEAVY ROUTES.

Now, go to the other extreme of the railroad mail pay—the heavy routes. These heavy routes all carry over 5,000 pounds daily; some of them over 300,000 pounds daily. The rate fixed by law for every pound in excess of 5,000 is $21.37 per ton (carried daily) per mile of railroad. It was originally $25 per ton, and has been reduced first 10 per cent and then 5 per cent, making it now $21.37, which for 365 tons is a rate of 5.85 cents per ton per mile. The small routes are paid at the rate of $1.17 per ton per mile, and the heavy routes are paid at the rate of 5.85 cents per ton per mile, or one-twentieth as much. Are the heavy routes paid excessively? If the rate established in this law for railroad mail pay upon the small routes seems reasonable, then is a rate that is one-twentieth as great upon the heavy routes an excessive rate? Some things seem to be clear enough in this matter.

One is that there is no other department of the railroad service in which there is so enormous a drop in the rate from a retail to wholesale transaction as in this mail rate. Indeed, it is held by many that the large shipper—the shipper in large quantities—should never be entitled to a lower rate than the small shipper. Assuming that the rate paid by the Government over small mail routes is reasonable, as it appears to be, considering the actual service and compared with the cost of star route and rural free-delivery service, the fall in the rate per ton from $1.17 on small routes to 5.85 cents per ton on large routes is certainly without parallel in any other class of railroad service or in any other service performed for the Government. It is a most drastic application of the principle of lower rates for wholesale quantities.

It also seems plain that statements of the "average rate" per ton per mile, arrived at by merely taking a large number of small mail routes with light weights, paid at the rate of $1.17 per ton per mile, to lump together with a small number of heavy routes, carrying three-fourths to four-fifths of all the mail in the country at 6 or 7 cents per ton per mile, is apt to be very misleading.

But comparisons are constantly being made in this manner. An illustration appears in a discredited book entitled "Cowles' Freight and Passenger Post," and I refer to it because this particular illustration has been frequently used in debates upon this subject. It undertakes to quote a nominal 100 pound express rate between New York and Chicago (980 miles) to compare with what is denominated in this book the "average rate" paid by the Government for carrying mails 442 miles—half the distance. Between New York and Chicago, both on express and mail, the rates are extremely low, the lowest in the country, but the mail rates are lower than express. The mail rate from New York to Chicago is $3.57 per 100, and the express earnings between the same cities on 7-pound packages (the typical express package) are $9.10 per 100, of which one-half goes to the railroad, or $4.55 per 100—that is to say, the railroad receives 20 per cent more from its express business between New York and Chicago than it receives from the Government for transporting the mails between the same points. But by plausibly comparing the express rate between New York and Chicago with a so-called "average rate" for 442 miles, which includes these hundreds of small routes over the whole country, it is made to appear that the mail rate is higher than the express rate, when the truth is just the other way.

The pouch service, the apartment-car service, the full postal-car service, and the fast mail service differ from each other so much in their cost to the railroad, in the manner of their performance by the railroad, and in their value to the railroad and to the Government that in determining whether the roads are overpaid or underpaid for carrying the mail each class should be studied by itself. In the pouch service there is some basis for comparing the price we pay to the railroad with the cost of the star route and rural free, but such basis disappears when it comes to the apartment-car service, because there the railroad furnishes often half a car and carries a messenger, but is only paid for the weight of a few pounds of mail. Nobody is to blame for these differences. They grow out of the proper conduct of the business. What I mean to say in this connection is that the question requires some knowledge and information and some exercise of judgment and some discrimination, particularly in matters of comparison of mail rates with express rates and passenger rates and freight rates. That is one reason why the views of newspaper and magazine writers picked up in an hour's reading possess little value, however much they may influence general public opinion.

There is no serious contention that there is overpayment on the small routes—the pouch service—but that the earnings of the railroads from carrying the heaviest mails are excessive.

Eighty-five per cent of all mail is carried in postal cars, either apartment or full postal cars. Upon every heavy route almost the entire weight of the mail is carried in postal cars, and upon the heaviest routes it is carried in special trains which transport nothing but mail. The railroad company does not perform any service for any other customer as it performs the apartment car, and the postal car, and the fast mail service for the Government. I shall make an attempt to candidly estimate the value of this claim of the postal service to us.

THE APARTMENT-CAR SERVICE.

It has been said that the Long Island Railroad (390 miles) is the poorest-paid railway in the United States for the work it performs in carrying the mails. This grows out of the great frequency of service on the line with light weight of mail, but chiefly because the mail is carried largely in apartment cars. The Post-Office Department asserts and exercises the right, whenever it considers the mail to be carried over any railroad route sufficient in amount and importance to require its distribution en route, or that the convenience of the public will be promoted by a distribution en route, to compel the railroad company, without compensation, to furnish half or three-quarters of a baggage car, or less, fitted up as a post-office, with space and facilities for a messenger to work in distributing the mails en route. We now have in this service 2,700 apartment cars. How may we fairly determine whether the earnings of the railroads from carriage over routes having apartment-car service are excessive or not? By knowing what the service is and what the pay is. This may best be learned by accurate knowledge regarding some typical route. In the RECORD a few days ago there were reproduced several columns of editorial matter from the Washington Post, relating to this subject, at the head of which appeared the following:

The little railroad running from Pontiac to Caseville, Mich., is 100 miles long. Two trains carry mail on this route, the daily weight of the mail being 926 pounds. The United States pays $8,262 a year for this service. The trains also carry passengers and express. The total cost of operating these two trains is $14,160 a year. The United States therefore pays 58 per cent of the cost of operation.

The name of this railroad is "The Pontiac, Oxford, and Northern." I am informed by officials of the Post-Office Department that it is in the hands of a receiver and that the receiver recently visited the Department with the purpose of trying to secure an increase in the compensation for carrying the mails and that the facts as to the service are these:

The mail service on this road is all apartment-car service—a typical route of this class. There are twenty-two post-offices on the route, at each of which the mail is delivered four times daily for three hundred and thirteen days each year for these offices and other post-offices tributary to them. At twelve different points the railroad company is required to deliver the mail from the station to the post-office, for which it pays out in cash $1,200, so that its yearly compensation is $7,062.12, or $22.50 per day. This is less than the fares of two passengers on the same trains, whose mileage (800 miles) at 3 cents per mile would yield the company $24, and less than the earnings on the lowest class of carload freight for an equal haul. This mail is not carried as freight, but upon two passenger and two mixed trains, and not in bulk as ordinary freight is transported, but in two apartment cars—fitted up as a post-office, each carrying a mail messenger. In one of these cars 18 feet of the space is occupied by mail; in the other 12 feet. This company performs 125,200 miles of mail service annually in this expensive way, and its compensation is 5.7 cents per mile, which is less than we pay per mile in the star route, and about half as much as each mile of rural free service costs the Government.

The operating expenses and interest upon the road for the year were $173,000, and its mail earnings amounted to 4 per cent of its expenses, instead of 58. The mails are carried upon four out of the six trains run on the road, and if the expenses were apportioned on the basis of trains the amount properly chargeable to these four trains would be $115,000, and the mail pay was 6 per cent of this sum.

What Member of the House is prepared to say that the Pontiac Railroad is overpaid for the service it is now rendering the Government? Who would vote to reduce that compensation 10 per cent or 5 per cent? I am assured by the officials of the Department familiar with the subject that the Pontiac case, as to compensation for work done, and as to expense to the railroad, and the value of the service to the public, and earnings from mail compared with passenger earnings, is fairly typical of the apartment-car service all over the country. If this subject is once opened up in earnest, we may expect an urgent demand from railroad companies that additional compensation be provided for in the apartment-car service.

THE POSTAL-CAR SERVICE.

There seems to be a prevalent misunderstanding as to the purpose and amount of what is designated as "postal-car pay." It is simply a misnomer to call this payment the "rent" of postal cars. It was provided in the original act of 1873 as a feature of the compensation to be allowed to roads which provided and hauled in their trains cars of this specified design, useless for any other traffic, but especially adapted for traveling post-offices.

This compensation, naturally enough, could only be allowed to such companies as conduct the business in that manner, and it seemed a fair provision that it should take the form of a wheelage rate, measured by the length of the car—that is, for a 40-foot car, 3.4 cents per mile run; for 45 feet, 4.1 cents; for 50 feet, 5.4 cents, and for 60 feet, 6.8 cents per mile run. What this amounts to per car was stated by Capt. James E. White, Superintendent of the Railway Mail Service, in his testimony as follows:

The average daily haul of a postal car is 250 miles; the actual cost to the railroad of hauling, lighting, heating, and repairing the car in one year amounts to $10,891. The Government pay for the use of the car is $6,250.

He probably estimated the cost of haulage at 9 or 10 cents per mile.

Prof. Henry C. Adams approved of the system, and said:

It is a payment, in addition to the regular payment for transportation, which the Government thought it wise to make in view of the fact that extra facilities were afforded.

The railroads do not need these postal cars for carrying the mails. They can stow all the mail bags in use on a four-car mail train in one baggage or storage car. These three postal cars additional are for post-offices only for Government use, and the roads which provide them must be paid for it or they will not furnish them. I will, with my remarks, refer to some of the evidence before the Wolcott commission relating to the reasonableness of this wheelage rate, the average paid by the Government for the country being, I think, 5 cents per mile of haul of each postal car.

I am endeavoring to make a direct and reasonable answer to the question of how much mail pay is received on the heavy routes of the country where the mail is practically all carried in postal cars, including this wheelage allowance, and whether it should be regarded as excessive. That is not a small inquiry, nor a very simple one. The earnings upon the so-called "heavy mail routes"—that is, routes carrying over 30,000 pounds of mail each way over the road daily—vary greatly. Some mail cars and trains which run west from New York and Chicago carry more than twice as much mail as the same cars carry coming east. Newspapers, magazines, and periodicals originate largely in the East and are carried west. But the cars must be run east as well as west, and the only way, of course, to know what any railroad company earns from the mail that is carried in postal cars is to ascertain what the average of its full postal cars earn east and west, including this wheelage allowance, and excluding cars held in reserve, for these reserve cars are never considered as a factor and are never paid for. The postal cars and trains on the heavy mail routes running west and east carry a much heavier weight of mail, and therefore earn much more than those running south and north.

Mr. Victor J. Bradley has for many years represented the Post-Office Department as eastern superintendent of mails, with headquarters in New York City. In his testimony, referring to the earnings of postal cars on the heavy routes, he said:

The average load carried by a postal car is about 2 tons of mail. Hence the average pay per car mile earned by a 60-foot postal car would be 11.70 cents for the weight of the mail carried in the car, plus the allowance for postal car, 6.84 cents, both together equal to 18.54 cents per car mile.

What Member of the House feels fully competent to say whether an earning capacity of 18.54 cents per car mile for a postal car is excessive or not—remembering that the car weighs 40 or 50 tons, is built for the Government's exclusive use and transported in passenger trains?

We have some knowledge of our own about how this compares, for instance, with earnings from passenger cars in suburban service where commutation rates prevail and are sometimes as low as 1 cent per mile. I am told that an average of 40 suburban passengers per car is a fair estimate. Such a passenger car will then earn 40 cents per car mile, compared with 18.54 cents earned by the average postal car in the country, according to Mr. Bradley, including the weight payment and the so-called extra compensation.

It is impossible to form an intelligent opinion whether the earnings of the heavy mail routes, where the bulk of the service is performed in postal cars, are excessive or not, without knowing the average load that is hauled in postal cars. Professor Adams fully recognized this. He said in his report:

The average load in a postal car is only 2 tons, and if you can not make it more than 2 tons, then the overpay, if there is overpay, lies on those routes where, as a matter of fact, they have an excess of 2 tons.

This view, that the question whether the large roads are overpaid depends upon what is the average load we permit the railroads to carry in postal cars, was also controlling with Mr. Loud, who was for years chairman of the Post-Office Committee, and a man who in an unusual degree possessed the confidence and esteem of this House. In his speech of February 6, 1901, reviewing the work of the Wolcott Commission, he said:

I came to Congress with the idea, because it was prevalent, that the railroad companies of this country were, to put it in a rough way, robbing the Government of a large amount of money every year. I believed it in a general way, without investigation, because people in whom I believed said so. The Commission, I suppose, were substantially at the beginning in the same frame of mind.

The investigation, which was carried on for about two years and a half, seems to have entirely changed Mr. Loud's opinion in the matter, and he joined in the Commission's report against reduction. His view, one result of the investigation, regarding the loading of postal cars, was expressed in this way:

The testimony shows that 2 tons is the average load. A postal car could carry 4 tons or 5 tons, but there are several things to consider. The car starts out for the West with more mail than it ever has again; the mail of one day may be double the mail of another. The question is what is the average weight carried from the start to the return, and if you assume an average of 4 tons, the car must have started with 16 tons, which no one contends can be loaded into a post-office car, fitted up as a post-office.

He incorporated in his remarks detailed statements regarding the service performed on the three heaviest mail routes of the country, namely, from New York to Philadelphia, from Philadelphia to Pittsburg by the Pennsylvania, and from New York to Buffalo by the New York Central—routes each carrying 300,000 pounds of mail daily. I shall add these important statements to my remarks. They show that the average load carried per postal car, not including storage cars, was, over one route, 4,320 pounds; over the second, 4,241 pounds, and over the third, 4,520 pounds—an average of 4,390 pounds, or a fraction over 2 tons per car. Based upon these figures, Mr. Loud expressed his conviction that but for the mail messenger service the small roads, carrying only 200 pounds of mail per day, are better paid than those carrying 300,000 pounds daily.

THE FAST MAIL TRAINS.

I have sought to examine each class of this service as it is conducted over the railroads of the country and apply to it, as nearly as possible, the test of reasonableness. There remains to consider the fast mail, or special train service, which, by degrees, the Post-Office Department has induced the larger railroads of the country to undertake, some of them (the Pennsylvania and New York Central systems) now running eight special fast mail trains, substantially carrying nothing but mail. These trains now carry a large percentage of the mails of the country. How much do they earn? Do they earn so much, are they so lucrative, that we ought to take the chances of their discontinuance by reducing the rates applicable to them?

Every pound of mail carried in these special mail trains goes at the minimum rate of about 6 cents per ton per mile, and is transported in postal cars traveling at the highest rate of speed, so that the maximum cost to the railroad is combined with the minimum of rate. Their earnings depend on how much they carry. A special mail train from New York to Philadelphia that is composed of three railway post-office cars can possibly carry 22 tons of mail, and with the rate of 6½ cents per ton per mile could, according to Professor Adams, earn $1.43 per train mile. If it carried four postal cars it could possibly earn $1.56 per train mile.

That is the most profitable mail train that the Pennsylvania road, with its dense traffic, can theoretically operate; it can not add another car and make the speed required in that particular service. There was produced before the Wolcott Commission complete and precise statistics showing the actual earnings of the three special mail trains operated from Chicago to Council

Bluffs over the Burlington road, the principal line in the district which I have the honor to represent on this floor—namely, train 15, west bound, $1.32 per mile; train 7, the newspaper train, also west bound, 82 cents per mile, and train 8, east bound, 61 cents per train mile, an average of 92 cents per train mile. These are actual results, including the weight compensation and postal-car pay, compared with the much higher theoretical results on the Pennsylvania road.

How much per train mile should a railroad earn to make a fair profit in running a train of this character? The Interstate Commerce Commission has published the actual cost of operating all passenger trains over the Pennsylvania road as $1.13 per train mile, and to this Professor Adams had added 33 per cent for interest, fixed charges, etc., bringing the cost above $1.50 per train mile.

Mr. Bradley's figures of actual tonnage earnings of the special train between New York and Philadelphia, carrying 15 tons of mail, are 98.5 cents per train mile. If there were 4 postal cars in this train, 27.4 cents ought to be added for the postal-car pay, making the actual earnings of the train $1.26 per train mile. If the average cost of passenger trains is $1.50 per train mile and the total earnings of the trains are $1.26 per train mile, is there overpayment in that branch of the service? While the earnings of the Burlington road from its three special mail trains average 92 cents per train mile, the average earnings of its passenger trains are officially reported to be $1.09 cents per train mile. The unusually expensive character of the special mail trains is well known. One of these trains which passes through the city where I live is scheduled at 50 miles per hour, including all stops; it must run over stretches of the road at a speed of 80 miles an hour, and is said to be the fastest train of its character in the world. All other business must give way to it, and the incidental expense caused by the delays to other traffic is, I know, regarded as an important feature, although naturally difficult to estimate.

While I have sought in my remarks to fairly examine and consider this mail traffic as it is carried on in the separate ways of pouch service or mail-bag service, apartment, and postal car and special-train service, all these various classes are simultaneously and constantly being carried on over every line of road in the country constituting a large mail route, and the sum of all the weights carried each way daily over the entire route in whatever class is the basis of the mail payment. The Pennsylvania road, for illustration, is paid on precisely the same basis as smaller roads for carrying the mails between New York and Philadelphia, where the average daily weight paid for is 309,000 pounds. This weight could be easily carried as freight in one 12-car train; many freight trains with seventy-five loaded cars are operated over western railroads. The Pennsylvania does, in fact, carry this 309,000 pounds of mail between New York and Philadelphia upon more than 140 different trains each day.

The postal car, carrying only two or three tons of mail, earns less for the railroad than its ordinary passenger coach; the special mail train, run at thundering speed, earns less than the actual average cost of its passenger-train service. Shall we from this conclude that the roads are carrying the mails at a loss? No; that does not appear to me a reasonable conclusion. In the average train-mile cost of passenger service on the Pennsylvania was included 38 cents for "interest and fixed charges." These would continue about the same if the road carried no mails. In this average train-mile cost are included all the items of maintenance of the roadway, station service, clerks, superintendence, and many others which would go on practically undiminished if no fast mail trains were operated.

Railroads undoubtedly accept and are glad to get many lines of business which pay less than the average cost of operation per car or per train. There is some profit to them if they can earn from the particular traffic something beyond the actual cost to them of handling that traffic. The mails are a necessity to the people and the people are the customers of the railroad. The Government, in this respect, is fortunate in finding this machine to command; more fortunate far, in my opinion, than if it owned the machine itself, with all its responsibilities and risks. The railroads seem willing to accept the business at the existing rates and to comply as to apartment cars and postal cars and special trains with the exacting and expensive wishes and requirements of the Post-Office Department, and I doubt if there are many railroad managers who know exactly whether they are making money on the business or not. What should be the attitude of Congress? I believe that there are few Members of this House who are not willing for the Government to pay the railroads for carrying the mails not only that proportion of expense which is properly chargeable to this class of their traffic, but such additional expense as they necessarily incur in according to us unusual space in cars and extraordinary facilities in speed, and we are also willing to pay the proportional share of a fair return upon the capital invested. Some of the roads are probably being thus compensated at the present time, but I doubt if many of them are, if the truth was known, so urgent have been the demands of the public for greater frequency and promptness in the mail service and judging from the evidence before the Wolcott Commission and the opinions of men who know how the business is conducted.

REDUCTION OF RATE SINCE 1878.

I would like to add a word upon the question whether the law has been changed or these rates reduced since 1878. The answer is that the law has not been changed, but the rates have been reduced. This law of 1873 is so skillfully drawn that it changes or its results change in the interest of the Government every year, with the effect of securing for us a constant and material and very satisfactory reduction in the rates. What we wish to know is whether we are receiving for the Government our share of the benefits flowing from the increase of volume and from greater density of traffic and the economics in railroad transportation which are incident to its marvelous growth. This was a feature which seems to have particularly interested Mr. Moody, now Attorney-General, and a member of the Wolcott Commission, and is discussed by him in his report. He quotes from the statistics furnished by Professor Adams to the effect that for our entire mail traffic, including postal-car pay, we paid the railroads at the rate of 26 cents per ton per mile in 1873, but that we only paid 12 cents per ton per mile in 1898, a decrease of more than one-half. Is that sufficient? He then compares the extent of this decline with the fall in other transportation charges since 1881, the earliest date when authentic figures were procurable. During that period of seventeen years Professor Adams states that passenger rates in this country fell 21 per cent, freight rates fell 41 per cent, and mail rates fell 39 per cent.

Professor Adams also reported the very significant fact that, while the annual rate of expenditure to railroads for carrying the mails from 1873 to 1898 had increased 425 per cent, the annual ton mileage of mail carried by the railroads had increased 1,004 per cent. This means that since 1873 the service performed for us by the railroads, measured by tons of mail carried, has increased two and one-half times as fast as their compensation, and we all know that the facilities in space and speed have increased in a still faster proportion. This means that they are steadily doing more business for less money—that is, that their rates to us are steadily falling.

Mail is always carried on passenger trains, and it is a passenger rather than a freight traffic, and Mr. Moody shows from the statistics of Professor Adams that the decline in mail rates paid by the Government is almost double the decline in passenger rates in the same period. Is that sufficient? It was satisfactory to Mr. Moody, especially in view of the almost complete revolution which the Post-Office Department has brought about in the handling of the mails upon all of the important routes.

It was satisfactory to the Wolcott Commission and, so far as we know, is satisfactory to the Post-Office Department. Mr. Moody calls it an "automatic" reduction. Upon principle this would seem to be a wiser method for securing a satisfactory change and reduction in the cost of this service in the interest of the Government and the people than the careless and necessarily ignorant method of making a horizontal cut or percentage reduction whenever the political impulse happens to seize us.

It may be suggested by some one that the review I have made of the different classes of mail service which we require from the companies and the compensation attached to each will be regarded as a statement of the railroad side of the case. That would be to utter a mere prejudice. A more sensible view is to regard it as a presentation of some of the difficulties before us. These difficulties have confronted each successive Postmaster-General and each Post-Office Committee for a generation and have confronted the five investigating commissions which from time to time during the past twenty-five years have made special inquiry into this subject. Why has there been this remarkable unanimity of conclusion that the law of 1873 is a wise law and with its great automatic reduction in the rate as the business increases that it is securing for us a substantial and sufficient reduction from year to year in the compensation that we pay to the railroads? It is because when genuine inquiry has been made the facts disclosed always seem to warrant this conclusion, and, after all, truth and fair dealing must be our chief reliance in our relations with the railroads as with all others.

THREE HEAVIEST MAIL ROUTES—AVERAGE POSTAL CARLOAD, 2 TONS.

Statement explanatory of postal car and mail service on route 109004, New York to Philadelphia, and route 110001, Philadelphia to Pittsburg, Pa.

Route 109004.—The statement is made upon the basis of through service, and shows 28 trains carrying postal cars or apartments, and which carry 80 per cent of the weight of mail. There were in addition to these 28 postal-car trains 112 other trains—some through trains, but mostly local—which carried 20 per cent of the weight. On the 28 postal-car trains there were altogether 171 cars, of which 41 were postal or storage cars; thus showing that the ratio was 1 postal car to 4 other cars per train.

Of storage cars, there were 6 out of 41, or about 14 per cent. On the basis of space, the entire equipment of storage cars would be about 11 per cent of the equipment of postal cars. It is shown that the average load per car, including storage cars, was 6,029 pounds, and excluding storage cars, 4,320 pounds.

Of the 28 postal-car trains shown, 6 trains had a mail apartment, constituting about one-half a car each; 15 trains had 1 postal car each; 5 trains had 2 postal cars each; 1 train had 3 postal cars, and 1 train had 4 postal cars.

Route 110001.—The statement is made upon the basis of through service, and shows 17 trains carrying postal cars or apartments, and which carry 96.5 per cent of the weight of mail. There were in addition to these 17 postal-car trains, 94 other trains, some through trains, but mostly local, which carried 3.5 per cent of the weight. On the 17 postal-car trains there were altogether 113 cars, of which 28 were postal or storage cars; thus showing that the ratio was 1 postal car to 4 other cars per train.

Of storage cars there were 5 out of 28, or about 18 per cent. On the basis of space the entire equipment of storage cars would be about 13 per cent of the equipment of postal cars. It is shown that the average load per car, including storage cars, was 6,341 pounds; and excluding storage cars, 4,241 pounds.

Of the 17 postal-car trains shown, 5 trains had a mail apartment constituting about one-half a car each; 6 trains had 1 postal car each; 5 trains had 2 postal cars each; 1 train had 4 postal cars.

NOTE.—It is understood that the railroad company's computations show that between 9 and 10 per cent of all passenger-train space, including local trains, is used for mail purposes between New York and Pittsburg. Also that the average number of cars per passenger train between New York and Pittsburg is 5.91.

OFFICE SUPERINTENDENT RAILWAY MAIL SERVICE,
New York, March 14, 1900.

Statement explanatory of postal car and mail service on route 107011, New York to Buffalo, N. Y.

Route 107011.—The statement is made on the basis of through service, and shows 19 trains carrying postal cars or apartments, and which carry 94 per cent of the mail. There were, in addition to these 19 postal-car trains, 57 other trains—some through trains, but mostly local—which carried 6 per cent of the weight. On the 19 postal-car trains there were altogether 137 cars, of which 34 were postal or storage cars; thus showing that the ratio was 1 postal car to 4 other cars per train.

Of storage cars there were 7 out of 34, or about 20 per cent. On the basis of space, the entire equipment of storage cars would be about 26 per cent of the equipment of postal cars. It is shown that the average load per car, including storage cars, was 6,884 pounds, and excluding storage cars, 4,520 pounds.

Of the postal-car trains shown 6 trains had a mail apartment constituting about one-half a car each, 6 trains had 1 postal car each, 1 train had 2 postal cars, 4 trains had 3 postal cars each, and 1 train had 4 postal cars.

Wheelage rate on postal cars.

The following evidence was before the Wolcott commission, showing the usual rates prevailing among railroads for hauling empty cars.

J. H. Sturgis, of St. Joseph, Mo., auditor of the Hannibal and St. Joseph road, testified:

"The postal car compensation on the Burlington system in 1897 was $220,580; the postal cars were hauled 4,740,703 miles, being an average rate of 4.65 cents per mile.

"For hauling home for repairs by freight train a freight car of private ownership, the railroad charges 5 cents per mile."

S. C. Johnson, St. Louis, auditor of the Cotton Belt road, testified:

"The postal car pay received by this road averages 3.12 cents per car mile. The established rate paid by railroads to other roads for the use of passenger cars is 3 cents per mile, and the road using the car pays all the incident expenses of heating, lighting, etc. When we haul a Pullman sleeper deadhead over the line we receive 20 cents per car mile, and furnish no light or heat, but they are more expensive to haul than mail cars."

George H. Crosby, of Chicago, secretary of the Rock Island road, testified:

"The average revenue per mile run by the Rock Island for postal car pay is 4.82 cents. The western classification rate on empty postal cars hauled in freight trains is 15 cents per mile."

Erastus Young, of Omaha, auditor of the Union Pacific road, testified:

"This company receives 5.5 cents per mile as postal car compensation.

"The legal rate for hauling empty mail cars on freight trains is 15 cents per mile, and on passenger trains would be greater. We, in fact, charge other companies 10 cents per mile for hauling mail cars empty over our lines."

Thomas Wickes, of Chicago, vice-president of the Pullman Company, was asked the following questions by Hon. William H. Fleming:

Q. "Mr. Wickes, doesn't it frequently happen that your company has to transport an empty Pullman car from some one point where your factory is located to some other point where it is to go on an active run? What do you have to pay the railroad company for transporting that empty Pullman car?"—A. "Between 10 and 14 cents per mile; 10, 12, or 14 cents. We have paid as high as 20 cents a mile."

Q. "Ten to 14 is the average?"—A. "Probably 12 would be a good average."

The highest pay per mile that can, under the law, be made for the largest postal car is 6.84 cents.

If the Government owned the car, a reasonable charge for hauling it empty would be 10 cents per mile.

Mr. MOON of Tennessee. Mr. Chairman, I now yield to the gentleman from Georgia [Mr. LEE].

Mr. LEE. Mr. Chairman, during my brief career in this House I have heard debates on rate legislation, the Philippine tariff, statehood, appropriations, and many other questions of national importance. I have had the pleasure of listening to many interesting speeches, but I invite your attention to a question more vital to the farmers of this Republic than any yet discussed in this House.

The distinguished Secretary of Agriculture has recently said:

> The farming element, or about 35 per cent of the population, has produced an amount of wealth within ten years equal to one-half of the entire national wealth produced by the toil and composed of the surpluses and savings of three centuries.

Being myself of this class—which so largely supports the country, but whose interests are so seldom recognized in our legislative halls, although entitled to some special considerations—I propose to briefly discuss the importance of governmental aid in the building of good country roads.

All civilized governments build roads. All save our own have some established system for building and maintaining public highways, under the direction of skilled and competent officials. Early in this century some work of this kind was done by the Federal Government.

The dawn of railway building and steam transportation seems to have largely drawn public attention and enterprise from our common highways, as a natural consequence, for more than fifty years—years that have been full of throbbing life and vigor for us as a nation; years that have seen our wealth doubled and trebled and quadrupled until the figures that express it are so large that they no longer convey a definite and intelligent idea to the ordinary mind; years that have no parallel in the history of our race for triumphs of man over nature, of mind over matter; years that have seen continents girdled with belts of steel and lightning highways strung across every sea; years that have been filled with a succession of wonders and triumphs in every field of human thought and endeavor. But the greatest wonder of all these wondrous years is that as a nation we have utterly ignored our country roads, and we seem surprised when we look about us and find them no better than they were half a century ago.

Some ten years ago the public mind began to quicken on this subject in a few isolated and circumscribed spots over the country. Somebody stopped long enough to glance around and remark that our country roads were not keeping step with this age of progress and improvement. At first these remarks attracted about as much attention as does the usual observation about the weather being unsatisfactory, just as if bad weather and bad roads were necessarily coexistent evils.

But as the need for better roads increased with even pace with the increase of population, the volume of complaint grew larger and louder, until at last the sapient conclusion was reached that the road question had attained the proportions of a problem. Then solutions were in order—and are yet, for bad roads, like the poor, we have always with us.

At first there was a pretty general agreement among those engaged in road building, academically, to relegate the whole job to the farmer, and he was advised to "hump himself" and build better roads. But the farmer, being already saddled with our tariff taxes and ridden by our "infant industries," booted and spurred, has had little time and less money to devote to the theory and practice of road building. Still, whatever has been done in that line he has had it to do.

So here we are yet, right in the middle of the road, and the very sorriest kind of a road at that. "A condition confronts us, not a theory." Are not a hundred years of observation long enough to convince us that the roads will not reform themselves?

The able and honorable Secretary of Agriculture estimates that the cost, the extra burdens imposed upon this country by bad roads, is not less than $600,000,000 annually. These figures almost stagger credulity, but who can gainsay them? And yet, when a bill was recently offered in this House to appropriate $25,000,000 annually for abating this great and continuing loss it was ridiculed in some quarters as a fake—visionary and impracticable—as if it were wild and unreasonable to stop a leak of hundreds of millions of dollars with this comparatively small appropriation. But those who reviled it have not seized upon the opportunity to propose a better plan.

The great problem of the ages—of this age and of all ages—has been and is to bring the producer and the consumer into the easiest and quickest possible communication with each other. To this end we build mighty navies; to this end we girdle the earth with railroads and tangle the air with telegraph wires; to this end we thrust tunnels under vast mountain ranges and rend continents asunder with interoceanic canals. The millions and

billions that are needed for these vast enterprises are flung at them with prodigal hand. Forty millions of dollars were promptly handed out from the Public Treasury to pay for the privilege of spending two hundred millions more to dig a ditch in foreign lands more than a thousand miles from home. Not one one-hundredth of 1 per cent of our people will ever see it; not 1 in 1,000 of our people will ever feel his burdens lightened or his joy and comforts of life increased when it is finished. One-half the sum it will cost, if intelligently expended upon our public highways during the next ten years, would give 100 times as many comforts and pleasures to 1,000 times as many of our people. The canal will be a great public utility, no doubt, and I do not wish to appear to oppose this great work, but better roads are a crying public need, now—every day. [Applause.]

As long as the farmer was the only sufferer from bad roads there was little likelihood of an appeal in their behalf ever reaching the Public Treasury. For armies and navies, for forts and arsenals, for armor and projectiles, and all the wants and whims of those who fight, we hand out unstinted millions; to those who plow, and sow, and reap we dole out grudging pennies.

The appropriations for war and kindred purposes (including pensions) last year were $335,867,482. Nearly half our entire income expended—for what? Put your finger on the net returns. An archipelago full of Malays and malaria, 10,000 miles from our shores; a trail of transports streaming out at the Golden Gate and across the Pacific with thousands upon thousands of the flower of our young manhood, and returning with their overflowing cargoes of diseased and maimed—pensioners to be!

Here at home are millions of patient, plodding, toiling farmers, who pay taxes enough to foot the whole enormous Army and Navy and pension bills and two hundred millions more for other expenses. And yet these toiling, patient farmers are never heard of except when Secretary Wilson issues his annual report. When the paltry sum of less than $7,000,000 is asked for this Department—every dollar of which the farmers themselves have paid into the Treasury a hundred times over—gentlemen elevate their brows, and, with a look of interrogation, scrutinize and criticise every item. A fearful hue and cry is now in the air about a trifle of $200,000 expended by the Department in seed and plant distribution to farmers. Why, $200,000 will not pay for the ammunition our valiant Army and Navy use for shooting holes in the atmosphere—target practice, they call it. [Laughter.] Two hundred thousand dollars used by the Army and Navy go up in smoke in a few days! Two hundred thousand dollars expended for seeds by the Agricultural Department carry pleasure and comfort into 2,000,000 homes. But they are not fighters and do not wear fine uniforms and gold lace. They are just farmers, and do nothing much but produce all the food and clothing for the world. [Laughter and applause.]

Of the more than eight hundred and twenty millions carried in the appropriation bills last year, the farmer contributed about 68 per cent, or nearly five hundred and fifty-eight millions. Although thus heavily taxed and bestrode by a burly and brutal tariff monster, he added more to the aggregate wealth of the country than all other sources combined. [Applause.]

The total value of the products of the soil last year is put at six and one-half billions of dollars. It is interesting to note the value of the principal farm products for the year 1905:

Corn crop	$1,216,000,000
Hay	605,000,000
Wheat	525,000,000
Oats	282,000,000
Potatoes	138,000,000
Barley	58,000,000
Tobacco	52,000,000
Sugar cane	50,000,000
Rice	15,000,000
Cotton	685,000,000

The total value of the cotton crop of the South for the last five years is worth $400,000,000, more than all the gold and silver mined in the world for the same number of years.

Every pound of this inconceivably vast tonnage must be moved to market over our present execrable roads, 85 per cent of which are practically impassable for loaded teams during half the year.

If the Army needs a road, it gets it. Even our unprofitable and expensive possessions, the Philippine Islands in the Far East, have been the objects of our solicitous care to the extent of expending $5,000,000 in building roads for them. Porto Rico, though not much larger in area than some of our counties, has had over $3,000,000 expended upon its roads since it came into our possession. During our brief occupancy of the island of Cuba our Government expended two and a half millions upon its public roads. Even those little dots out in the Pacific, the Hawaiian Islands, acquired by diplomatic legerdemain, have come in for a share and have a contemplated expenditure of two and a half millions upon their roads.

These various sums aggregate $13,000,000 that have been expended during the past few years in building roads, not a foot of which lie within the United States. What have we against our own people that we should deny to them blessings that are freely extended to the idle islanders of the seas?

But other interests and forces are coming to the aid of the solitary, the isolated, the unorganized, and almost unorganizable farmer. His friends in the cities, having grown rich and equipped themselves liberally with self-propelling vehicles, want better roads to roll them over, and they are interested in the problem of the roads. The manufacturer, learning from experience that bad roads interfere materially with his obtaining steady and continuous supplies of raw material, wants the roads improved. The millions of operatives in mines, mills, and shops are learning that bad roads increase the cost and disturb the regular supply of food products from the farms which they must have, and they want better roads. The merchant has learned that bad roads retard and depress trade, and he wants them mended. Our Post-Office Department is greatly hindered and hampered in its efforts to supply to the country regular, prompt, and reliable mail service for lack of better roads. In fact, it would be hard to name an interest, an industry, or an individual who would not be benefited by better roads.

The question of railway rate legislation has commanded the attention of this House for days and weeks, and has been receiving the serious thought of the Senate for weeks. For years it has aroused the deepest interest throughout the country, and I would by no means disparage the importance of this question; but, sir, I call your attention to the fact that the average charge of railroad transportation of freight throughout the country is three-fourths of 1 cent per mile for the hauling of a ton of freight. Now, mark you, that the average cost of hauling freight over dirt roads is 25 cents per ton, or thirty-three times as much, and further, bear in mind, that the freight that is hauled over the railroads in a large part must first travel the dirt road; in fact, 98 per cent of the freight that is shipped over railroads must first pass over a dirt road to get to a railroad for transportation. Does not this impress the importance of the improvement of our roads throughout the land?

If I had the privilege of writing upon our statute books a law that had more of the promise and potency for immediate and lasting good to all the people than any law that has been proposed or discussed in this Hall, it would be a law creating a Department of Public Highways, to act through and in conjunction with State, county, and municipal authorities in redeeming our country from the throes and thraldom of its miserable roads; and I would give that Department not less than fifty millions a year until the work had reached a satisfactory stage of advancement.

A distinguished Senator, in the debate on the rate bill a few days ago, stated that a reduction of 1 cent per ton per mile in the present rates on all freights would put more than half the railroads in the hands of receivers. If this be true, what must be the appalling cost to the country of a system of public roads that increases the cost of moving its vast agricultural products, not 1 cent only, but five or ten times as much per ton per mile? A simple arithmetical calculation would give us the figures, but the mind could scarcely grasp their staggering import.

Mr. Chairman, when we find we are in the wrong road, no matter how long nor how far we have traveled it, it is the part of wisdom to stop and change our course. For a hundred years we have waited for this road problem to be worked out under the old methods, and we are only getting deeper in the mud. To the principle and practice of extending Federal aid to road building we have already been long committed. I take pleasure in mentioning the fact that more than seventy years ago the Hon. John C. Calhoun, of South Carolina, advocated the very idea proposed in a bill which I had the honor to introduce here recently. He advocated the division of the surplus among the States and the expenditure of it by the States in road building. And another southern statesman, the Hon. Jefferson Davis, of Mississippi, was the very first, I believe, to give official indorsement to the idea of a transcontinental railway to be built by the Federal Government. Had his recommendation, made while he was Secretary of War in 1855, been carried out, what an ugly chapter in our history might have been omitted, and what an empire of public lands, granted finally for this purpose, would have remained the property of the home seeker.

But if there were neither law nor precedent for the General Government to engage in road building, it is high time we were making both. Congress is wisely encouraging and sustaining

the Post-Office Department in its efforts to extend the wonderfully vitalizing and educating benefits of free rural mail delivery. Nothing that has been undertaken by the General Government since the establishment of the Post-Office Department has proven so immediately and universally popular as these daily rural mails. To send these mails daily over such roads as we have now must be done at an expenditure of money and labor and energy and time that would be reduced in many instances by half if the roads were given proper attention. Nothing will contribute more to the rapid extension and improvement of this service than to improve the roads over which it must travel.

I do not believe that this Congress can make a more useful expenditure of public funds than in the direction I have indicated, nor one that would be more immediately and lastingly popular and beneficial. Then shall every interest be guarded by national legislation, and the welfare of that class which affords sustenance to all classes be not neglected. Shall no voice be heard in behalf of the millions of farmers in the United States? These people maintain no lobbies at your portals. They have trusted to your high sense of duty, to your loyalty to the supreme interest of the Republic. Will you longer disappoint them? [Prolonged applause.]

Mr. MOON of Tennessee. Mr. Chairman, I now yield to the gentleman from Illinois [Mr. RAINEY].

Mr. RAINEY. Mr. Chairman, the levy and collection of taxes is one of the most important functions of the modern State, and I know of no better time to discuss this great subject than now, when we have under consideration a bill which carries $191,000,000.

There has grown up in this country within the last few years a system of levying taxes not dreamed of by the founders of the Republic; a system of taxation in existence at the present time in no other great commercial nation in all the world; a system of taxation that Alexander Hamilton did not believe in nor did he indorse. His dictum was, and he repeated it on all occasions wherever he had an opportunity, that subsidies might be properly paid to industries newly established, but their continuance upon industries long established was most questionable.

A great party followed in his footsteps for many years, but a few years ago, when the so-called "McKinley tariff" was under discussion, they for the first time threw aside the mask and declared themselves in favor of that system of taxation which might be exercised not for the purpose of raising revenue, not for the purpose of subserving any interest of the State, but they claimed then for the first time, in opposition to the teachings of the great Hamilton, that they had a right to delegate the taxing power to individuals and to private corporations, to be exercised by them for their own personal and private benefit.

As a result of this sort of practice, already in this country it has not only become impossible to buy in the cheapest market, but it has become impossible for the American citizen to buy American-made goods in the cheapest market. Up here for 1,500 miles along our northern frontier they have built a railroad out of American steel rails, and it cost $27 a ton for the rails that built every mile of it. It cost $27 per ton for the rails that built every mile of siding and for the rails that keep it in repair. Just on the other side of the border, over in Canada, they have built another railroad—in every sense of the term a parallel and competing line—out of rails that cost $22 per ton; but the rails out of which the Canadian road is built and the rails out of which the American road is built all came from the same factory here in the United States, protected by our tariff laws.

Are the men who build our railroads permitted under these circumstances to buy American-made goods as cheaply at home as American-made goods can be bought in another country?

Not long ago there was considerable talk in the papers upon the question of the material and all structural iron intended to be used in the construction of the Panama Canal, and the people learned, through the President of the United States, and it was an object lesson to all of them, that if American-made goods, American structural iron and steel, could be purchased at the export price, at the price the steel companies charged for it 3,000 miles away across the sea, it would result in the saving of untold millions of dollars to the United States Government.

Back of a tariff wall make one price. Just on the other side and out in the open the protected factories meet the competition of the world, and they meet it successfully, and they make there another and cheaper price. Back of the tariff wall our agricultural-implement factories manufacture plows and harrows and other agricultural implements, and they ship them to all the agricultural sections of all the world, and they sell them from 25 to 50 per cent cheaper than the American farmer who lives within 50 miles of the factory can buy them. They sell in South America drills and plows and harrows, and the sheep farmer of South America, with American-made goods purchased from 25 to 40 and 50 per cent cheaper than the American farmer can buy them, plows up his sheep pastures, sows wheat, and sends that wheat to Liverpool there to compete with the products of the American farm.

These facts have been brought home to all of us for many years. Before the last Presidential election there were murmurs of discontent from the Republicans in the States of the far East.

Mr. McCLEARY of Minnesota. Mr. Chairman, before my friend gets on to another subject, would it interrupt him if I should ask him a question at this time?

The CHAIRMAN. Does the gentleman yield?

Mr. RAINEY. I certainly yield.

Mr. McCLEARY of Minnesota. Is my friend aware that in the last report of the British Iron Trade Journal steel rails are quoted at £6 5s. a ton, which is a little over $31, and that they are quoted at $28 a ton in the United States?

Mr. RAINEY. Mr. Chairman, that sometimes occurs. That occurred in 1898, but for only sixty days. That is a mere temporary condition, the gentleman will find.

Mr. McCLEARY of Minnesota. The gentleman admits the fact.

Mr. RAINEY. I do not admit the fact. I do not know.

Mr. McCLEARY of Minnesota. That is what I want to find out. It is a fact.

Mr. RAINEY. We shipped abroad in 1899, $9,000,000 worth of steel rails when we were selling steel rails here for $27 a ton and when they were selling for $22 a ton across the sea, and we competed, and competed successfully, with that price. Why, if you could buy the structural steel and the ship plates that go into a 12,000-ton vessel at the export price—if you could buy at the English price—a 12,000-ton vessel would cost $250,000 less in this country than it costs now to build. Under these circumstances, is it not time to at least somewhat modify our present tariff schedules? Murmurs of discontent were heard before the last Presidential election. In the Far East—from the Republicans of Massachusetts—there came murmurs of discontent in no uncertain terms. In the great States of the Northwest the same kind of murmurs were heard, and in the great States of the Middle West.

Before entering upon the last campaign and when the President of the United States was notified on the 27th day of July, 1904, of his nomination at the hands of a great party, in response to the official notification of the action of the Republican convention, he said, and I am quoting his exact language:

> That whenever the need arises there should be a readjustment of tariff schedules is undoubted, but such changes can with safety be made only by those whose devotion to the principle of a protective tariff is beyond question, for otherwise the changes would amount not to readjustment, but to repeal. The readjustment when made must maintain and not destroy the protective principle.

And Republicans, from one end of the land to the other, who were complaining about the tariff were satisfied with this statement. They were led to believe that the way to get a readjustment of tariff schedules was to elect to this House men who were friends of the protective tariff. It was the old argument that the tariff must be revised in the house of its friends, and the campaign proceeded. One million five hundred thousand Democrats stayed away from the polls, and enough friends of the protective tariff were elected to this House to accomplish some results. They elected so many friends of the protective tariff that they have overflowed this side of the Chamber, and as we sit here there are Republicans to the right of us, Republicans to the left of us, and Republicans in front of us, and sometimes, when we turn around, there are so many of them here we find them behind us also.

No House in the last fifty years ever had so many friends of the protective-tariff system as the present House. We sit here a small oasis in a desert of Republicans. You can not expect at any time in the future to get more Republicans here than you have here now; but you can expect this fall, if you do not make a substantial revision of these tariff schedules, to have less, and a good many less. [Applause on the Democratic side.] We were prepared for the letter of the majority leader to the Massachusetts delegation. That did not surprise the country any. It was foreshadowed over a year ago by the American Protective Tariff League. Why, as soon as you were able to cross the Rubicon, as soon as you obtained this enormous majority in this House, your zeal for tariff reform ended, and the majority leader, when he made public on the 24th day of last month his letter, did not settle anything that we did not already know. After the elections were safely passed, and at its twentieth annual meeting, the

American Protective Tariff League, speaking, as it always does, for the Republican party, in the resolutions it adopted in the city of New York a little over a year ago, said:

The voters of the United States were asked to choose between the party of tariff destruction and the party of tariff maintenance. Their choice was made. * * * The people by an enormous majority have once more expressed their complete approval of that system and policy. They have declared once more in favor of tariff peace; of tariff stability.

And now, corroborating the orders issued by the Protective-Tariff League a little over a year ago, and in obedience thereto and in order to find another excuse for not revising the tariff schedues at this session, the majority leader, in his efforts now to quiet the apprehensions of the Massachusetts delegation, in order to settle forever so far as this Congress is concerned the question of tariff revision, announces this as the reason for the refusal of the Republican party to act, and I quote from his letter:

Congress is not prepared to review the tariff schedules in that calm, judicial frame of mind so necessary to the proper preparation of a tariff act at a time so near the coming Congressional elections.

The excuse at the next session of Congress will be that it is the short session of Congress and we can not attempt anything of that kind, and the excuse at the following session will be that a Presidential election is approaching and that we can not maintain a "judicial frame of mind," and it will not do to surrender in the presence of the enemy. After that, my friends, you will not find it necessary to make any excuses. After that there will be no Republican Members sitting on this side of the Chamber [applause on the Democratic side] and the tariff will be revised. The demands of the people will be met, and the tariff will be revised by the only party in this country that ever will revise it. [Applause on the Democratic side.] You can not fool the people always. You were able to do it just before the last Presidential election. You have been able to do it in the sessions of Congress that have elapsed since then, but you can not keep up this sort of dawdling always. The people of the United States in this century and at this time demand action.

Now, Mr. Chairman, I want to talk this afternoon about watches, not because watches form any exception to the general rule, not because they are the only articles that are shipped abroad and sold cheaper than they are sold here at home, but because in the last three months, through the energy of a typical Democrat who lives in the city of New York, it is possible this afternoon to make of watches an object lesson; and I have caused to be displayed here in this Chamber, on the easel in front of the Speaker's desk, in the presence of the Members of this House, a photograph, 40 by 70 inches in size, taken in the city of New York two weeks ago. It represents an ordinary scene in front of the store of Mr. Charles A. Keene, at 180 Broadway, in that city. Across the front of his store is stretched a sign, covering an entire story of that store, upon which, as you all can see no matter where you sit in the room, is inscribed the following:

Great protection sale. Waltham and Elgin watches bought in England cheaper than in America and brought back to undersell this market. Charles A. Keene, 180 Broadway, New York.

Mr. DALZELL. Mr. Chairman, I would like to ask the gentleman whether this advertising picture was taken at the instance of Mr. Keene?

Mr. RAINEY. The advertising picture was taken at my instance, at my request, and by my photographer, and I expect to pay for it. [Applause on the Democratic side.] I brought it here, and I have also brought a number of watches here from his stock. I have brought it here this afternoon, and I am going to conduct a kindergarten for "stand-pat" Republicans [applause on the Democratic side], and you gentlemen will not disconcert me by asking questions.

Mr. LACEY. Mr. Chairman, I would like to ask the gentleman a question.

The CHAIRMAN. Does the gentleman yield?

Mr. RAINEY. Yes.

Mr. LACEY. Does Mr. Keene sell these goods cheaper in New York than they are sold by other people there?

Mr. RAINEY. I am proceeding to discuss that question.

Mr. LACEY. I just want to get the facts. He imports them from England and sells them cheaper here, does he, than other people do?

Mr. RAINEY. I do not want the gentleman to make my speech.

Mr. LACEY. I want to know whether he pays the duty on them or whether he smuggles them in.

Mr. RAINEY. He has 2,400 watches hung up there now, or they were until the 31st of March, in the custom-house at New York, brought back from England. I will satisfy the gentleman on that point before I get through.

Mr. LACEY. I want to know whether he pays this duty and still sells them cheaper than other people do here. If he does, then the duty certainly does not have anything to do with it.

Mr. RAINEY. Mr. Chairman, I am very glad the gentleman from Iowa [Mr. LACEY] has asked these questions. They furnish me with a line of argument, and I will answer every one of them as I proceed. I have no objection to questions from every stand-pat Republican in this House.

Mr. GOULDEN. Mr. Chairman, will the gentleman permit a statement here?

The CHAIRMAN. Does the gentleman yield?

Mr. RAINEY. Yes.

Mr. GOULDEN. I want to corroborate what the gentleman from Illinois [Mr. RAINEY] says with regard to that. For nearly five years I have had my offices in the same building, and I have seen that sign there for the last three or four months. [Applause on the Democratic side.]

Mr. LACEY. Mr. Chairman, I am trying to find out why he does not add the duty to the price, if he paid the duty.

Mr. RAINEY. I will answer the question fully before I get through.

Mr. GOULDEN. For three or four months the same sign you see there has been on the front of that building to my personal knowledge.

Mr. RAINEY. Mr. Chairman, I will answer the question of the gentleman from Iowa, and I will satisfy every Republican in the House before I get through that the tariff schedules ought to be revised, and if I do not succeed in satisfying them, I will succeed in satisfying their constituents by putting this argument and these facts and this evidence in the RECORD, and if I succeed in satisfying their constituents, there will be many of them—and I shall not regret it—who will be relegated when the Sixtieth Congress meets to the private walks of life. [Applause on the Democratic side.]

My attention was first directed to this gentleman's business by advertisements he inserted in the New York papers. I did not pay much attention to them until I found a half-page advertisement in the New York Press, and I thought that a half-page advertisement appearing in a paper which is one of the principal exponents of the Dingley tariff in this country ought to receive some attention. While this advertisement was running, while this paper was taking the money of Mr. Keene for this advertisement, in its editorial columns they were talking about the Dingley tariff and insisting that it was inspired—every word and every syllable and every comma. Inasmuch as this advertisement in the New York Press first directed my serious attention to this subject, I desire to send it to the Clerk's desk to be read.

The CHAIRMAN. Without objection, the article will be read by the Clerk.

The Clerk read as follows:

[The New York Press, Friday morning, February 2, 1906.]

FOR SALE—DIAMONDS, WATCHES, ETC.

Warning! Do not buy Waltham or Elgin watches from dealers allied with the trust!

When I started this campaign against the iniquitous methods practiced by the watch trust against both consumer and dealer I prophesied that the exposure of the combine's unfair methods would inevitably compel the watch trust to forego extorting extravagant profits from American watch buyers and compel them to get down to a square basis or to quit the foreign field. That alternative is now being considered by the watch trust.

The members of the watch trust are now studiously analyzing the problem created by the stupendous competition I have initiated—even the dealers are protesting against and rejecting the ironclad agreements heretofore forced upon them by the trust.

The cost of your watch may be a comparatively trivial affair, but the price you pay involves a principle, and a vital one.

To pay $75 for a Waltham "Riverside Maximus" (the price which eight out of ten dealers will ask you) may not be a willful extravagance from the standpoint of intrinsic value, but to pay $32.70 more than that particular watch sells for in England, Egypt, or Australia simply because it is a home-made article and you live in the United States is hardly sufficient justification for paying tribute and dividends to the trust. The average man wants fair play in watch buying as in other things.

There are no better watches made in the world than those turned out of our American factories. That fact is made doubly plain by the high character of the goods sent abroad by the watch trust to compete with the world-renowned watches of such makers as Sir John Bennett, Jules Jurgensen, Patek Phillipe, Audemar, Constantin & Vacheron, etc.

It may seem paradoxical or a "bull" to say that in order to get the best American-made watches at the lowest prices you must buy them abroad, but such is the fact, thanks to a benevolent "protective" tariff, which enables the watch trust to hold up the American public and demand tribute for dividends from Americans.

Here is an illustration of how the watch trust mulcts (or milks) the American watch buyer:

Walk into any jewelry store in the United States and ask to be shown the best Waltham watch made. They will show you the "Riverside Maximus," at $75.

Under no circumstances are they allowed to sell this watch for less than $60, as they are bound by the "ironclad" agreement with the trust to maintain that as the minimum price. I buy this same "Riverside Maximus" in England, defray all shipping expenses, bring it back to this country duty free, and offer it to the American public at $42.30, and make a reasonable trade profit on the transaction.

The same relative price difference applies to all other grades of Waltham and Elgin watches.

It is even possible to bring Waltham movements back to this country from England and retail them for $2.75 at a profit.

All my watches are guaranteed brand new, just as they come from the Waltham and Elgin factories. The prices are all under the market; for instance, the Riverside, seventeen jewels, price $16.39. No jeweler is allowed to sell this for less than $25, under penalty of being blacklisted by the trust cutting off his supply. Ask some jeweler and find out. All my prices represent about the same percentage of saving. The prices quoted below are for movements alone. On request I will submit prices on any sort of case made. I do not sell movements without cases or cases without movements. They are priced separately simply for the convenience of customers.

Waltham, Maximus, 23 jewels	$42.30
Waltham, 15 jewels, No. 820	3.98
Waltham, 17 jewels, No. 85	4.78
Waltham, Crescent St., 19 jewels	16.92
Waltham, Crescent St., 21 jewels	18.98
Waltham, Riverside, 17 jewels	16.39
Waltham, Vanguard, 23 jewels	25.38
P. S. Bartlett, 17 jewels	7.98
Elgin, B. W. Raymond, 19 jewels	16.92
Appleton, Tracy & Co., 17 jewels	11.98
Lady Waltham, 0 size, 16 jewels	9.98
Riverside, 12 size, 17 jewels	16.39
Waltham, Maximus, 21 jewels	39.98
Elgin, Veritas, 23 jewels	25.38

CHARLES A. KEENE,
180 Broadway, New York, Watches, Diamonds, Jewelry.

Mr. RAINEY. What is known as the "big four" in the watch trust are the following: The American Waltham Watch Company, of Waltham, Mass.; the Crescent Watch Case Company, of Philadelphia; the Elgin National Watch Company, of Elgin, Ill., and the Keystone Watch Case Company, of Newark, N. J. The Waltham company make movements only, and they are put on the market and sold in Crescent watch cases. The Elgin National Watch Company sell their watches to the Keystone Watch Case Company for export, and they are exported by the Keystone Watch Case Company. The New York Standard Watch Company, of Jersey City; the Philadelphia Watch Case Company, of Riverside, N. J., and the E. Howard Watch Company, of Boston, are controlled by the same capital that controls the Keystone company, and in order to show how closely all these watch companies are related I want simply to call attention to the fact that although the capital of the Keystone company controls the Howard Watch Company, the Howard watches are made by the Waltham factory in New York. All these companies own each other's stock.

Now, I want to answer the questions of the gentleman from Iowa. They are all pertinent and in fairness they ought to be answered, and inasmuch as he has asked them, coming as they do from a leading exponent of the "stand pat" Republican policy of this country, they ought to be answered fully, and if I do not entirely satisfy the gentleman from Iowa or any other gentleman on the other side of the House, I trust that you will keep on interrupting and asking questions until I have satisfied every one of you. I have been studying the watch business for some time now, and I feel that I know something about it and I am willing to give to you, who control the situation here and who alone can say whether or not there shall be a revision of the tariff schedules, the benefit of my labors. [Applause on the Democratic side.] Under the Dingley Act the following tariffs are imposed upon watches and upon watch movements. I read from section 191 of the tariff law of 1897:

Watch movements, whether imported in cases or not, if having not more than seven jewels, 35 cents each; if having more than seven jewels and not more than eleven jewels, 50 cents each; if having more than eleven jewels and not more than fifteen jewels, 75 cents each; if having more than fifteen jewels and not more than seventeen jewels, $1.25 each; if having more than seventeen jewels, $3 each, and in addition thereto, on all the foregoing, 25 per centum ad valorem; watch cases and parts of watches, including watch dials, chronometers, parts of watches, etc., 40 per centum ad valorem. All jewels for use in the manufacture of watches or clocks, 10 per centum ad valorem.

In other words, under the Dingley Act the tariff upon watch movements and upon watch cases, adding together the specific and the ad valorem duties, amount to nearly 50 per cent of their value. Now, in order to further answer the gentleman from Iowa upon a matter about which I am surprised he is not fully informed, I want to say that American-made goods sent abroad can be brought back without paying any duty if they come back in the same condition that they were in when they went abroad. You must satisfy the tariff officers, not that they are in the same condition perhaps, but that they have not been improved upon or advanced in value while abroad, and in that connection I want to send this letter to the Clerk's desk to be read.

The CHAIRMAN. Without objection, the Clerk will read the letter.

The Clerk read as follows:

TREASURY DEPARTMENT, OFFICE OF THE SECRETARY,
Washington, February 23, 1906.

HON. HENRY T. RAINEY,
House of Representatives United States.

SIR: In reply to your letter of the 20th instant, I have the honor to inform you that articles of American production or manufacture upon being reimported into the United States after exportation thereof are entitled to entry free of duty, under paragraph 483 of the tariff act of 1897. I inclose herewith copies of Department circulars Nos. 125 and 35, of October 19, 1899, and March 26, 1903, respectively, containing the regulations relative to the entry of such reimported American goods.

Respectfully,

H. A. TAYLOR, *Acting Secretary.*

Mr. RAINEY. Now, before proceeding further with the discussion of this question I want to show how the watch trust does business. I have here a contract which the American Waltham Watch Company exacts from every retailer in this country who buys the better grades of watches, and in watch parlance the better grades of watches are called "railroad movements." No dealer who buys a railroad movement in the United States is permitted to sell that movement for less than the minimum price fixed in that contract. Under this contract the Waltham Company exercises the right to control absolutely the men who shall be jobbers of watches in the United States. In order to show you how it is possible for this business to be built up back of this tariff—a nefarious, outrageous business like this—I am going to put the contract of the Waltham Company in the RECORD. It has never been published; and I am not permitted to give the name of the retail dealer who furnished me with this copy. But I propose that the country now shall know, and I ask the Clerk to read the contract at the bottom of this bill, beginning with the words, "Bill to retailers."

The Clerk read as follows:

BILL TO RETAILERS—CONDITIONS OF SALE.

Each Waltham railroad movement specified in this bill is sold subject to all the conditions hereinafter and in the Waltham contract notice accompanying such movement set forth, which conditions, the purchaser named herein, by the acceptance of such movement, agrees with the undersigned company to keep and perform, viz: (1) Retail watch dealers must not dispose of said movements except by sale; (2) must sell said movements only to customers purchasing the same for their own or others' use and not for resale; (3) and must not advertise or sell any of said movements or any other Waltham railroad movements at less than the following net prices, respectively:

Vanguard, twenty-three jewels, $35; Vanguard, twenty-one jewels, $30; Vanguard, nineteen jewels, $28; Crescent St., twenty-one jewels, $26; Crescent St., nineteen jewels, $24; Appleton, Tracy & Co. Premier, $21; Riverside Maximus Lever Setting, $60; Riverside Lever Setting, $25.

(4) All watch dealers handling these or any other Waltham railroad movements are to be considered retail dealers, except those named as jobbers in the latest list of jobbers issued by said company. (5) A breach of any of these conditions as to any Waltham railroad movement shall revest in said company the title of such movement and of all other Waltham railroad movements in the possession of the violator, and upon tendering the price paid by the holder of such movements the said company shall be entitled to retake possession of the same.

A duplicate of this bill has been sent to the undersigned, by whom these conditions will be enforced.

AMERICAN WALTHAM WATCH COMPANY,
Waltham, Mass.

Mr. RAINEY. Now, I want to put in the RECORD, and I want to have it read here, the contract the Elgin company exacts from other companies, and this will be the first time this contract has ever been printed.

The Clerk read as follows:

RETAIL BILL.

The Elgin movements specified herein are sold subject to the following license conditions (see license accompanying each movement): (1) The retail purchaser may advertise and sell the same only to buyers for use, and at not less than the following prices: No. 214 Veritas, $35; 239 and 274 Veritas, $30; 240 Raymond, $24; Father Time, hunting or open face, $26; 17-jewel B. W. Raymond, hunting or open face, $21; 270, $28; 280, $23. (2) Acceptance of the movements is assent to these conditions. (3) Any violation of the license conditions revokes and terminates all right and license as to movements and all other Elgin movements in the violator's possession.

Mr. RAINEY. Under the contracts of the Waltham and the Elgin companies, a Crescent Street 21-jewel movement can not be sold to any retailer in the United States for a less price than $26. You can go into the store at 180 Broadway and buy that movement for $18.98. Under the minimum-price contract just read of the Waltham Company a Vanguard 23-jewel watch movement can not be sold by any retail dealer in the United States for a less price than $35. Mr. Keene, in the advertisement I had read just now from the Clerk's desk, agrees to sell this watch movement for $25.38. These movements can not be sold for less than this price. If you go into some store on a prominent thoroughfare in one of our large cities, where there is a display of diamonds on a black velvet background and a profusion of cut glass and immense plate-glass windows, they will charge you much more for a Crescent street 21-jewel Waltham movement than $26, but no retail dealer in the United States can sell it for less, and you can not buy it for less under the contract they exact from all of them and which I have just had read.

Under the contract I have had read no retail dealer can sell a Crescent Street 19-jewel Waltham movement for less than $24. In the advertisement from the New York Press, that I presented a while ago, Mr. Keene agrees to sell this watch, and does sell it, for $16.92—$8 less than any retail dealer can buy it

for in the United States. Under the minimum contract price of the Waltham company, a Riverside Maximus movement can not be sold by any retail dealer in the United States for less than $60; and if you go into the store of some fashionable dealer, where they are paying a high rate of rent and handling and selling cut glass and diamonds, they will charge you from $75 to $100 for this movement. According to the advertisement I sent to the Clerk's desk, Mr. Keene agrees to sell a Riverside Maximus movement—and it is the best watch movement made in the United States, and perhaps in the world—for $42.30. Under the Waltham contract, a Riverside lever-setting movement can not be sold for less than $25, and in this advertisement Mr. Keene says he will sell it for $16.39.

Under that little contract the Elgin company exacts from all retailers in the country; they are not permitted to sell 214 Elgin Veritas watch movements for a less price than $35. As a matter of fact, most of them sell this movement for much more than that. None of them can sell it for less without forfeiting, under this contract, not only the particular grade of watches they are so selling, but their entire stock of Elgin watches. Mr. Keene sells it for $25.38, $10 cheaper than any retailer in the country is permitted to sell it.

Under the Elgin contract a 240 Raymond Elgin can not be sold for a less price than $24. If you try to buy that kind of movement you will find it oftener sells for more than $24 than for $24. But if you go into some little obscure store, on some out-of-the-way street, you will be able to buy this movement for $24, but not for any less. Mr. Keene's price on this movement is $16.39, as shown by his advertisement.

Now, all these watches——

Mr. WILLIAMS. Mr. Chairman, if the gentleman will permit an interruption, for fear the country may think that the attention of the Republican majority in the House had never been called to this matter and that they have had no opportunity to remedy this evil by reducing this extortionate duty behind which is sheltered this trust, as claimed, I would like to get the gentleman's permission to read a brief bill of one sentence. On February 20, 1906—

Mr. WILLIAMS introduced the following bill; which was referred to the Committee on Ways and Means, and ordered to be printed.

It is still lying in that "stand-pat" Committee on Ways and Means.

A bill to reduce the duties on watches imported into the United States from foreign countries.

Be it enacted, etc., That from and after the passage of this act the duty levied, collected, and paid upon watches imported into the United States from foreign countries shall be 15 per cent ad valorem.

SEC. 2. That all provisions of the law in conflict with the provisions of this act are hereby repealed.

Now, one word more, if the gentleman from Illinois will permit me. The gentleman has told about this iniquitous trust contract which is made by these two companies; a similar contract is made by the sugar trust, and a similar contract is made by nearly all trusts. The gentleman from Mississippi, representing the minority on this side of the Chamber, December 21, 1905, introduced a bill which was referred to the Committee on Interstate and Foreign Commerce, where it seems likewise to "stand pat." That bill is a copy of the Massachusetts statute, and reads as follows:

Be it enacted, etc., That no person, firm, or corporation, or association of individuals, or association of corporations engaged in interstate commerce shall make it a condition of the sale of goods, wares, or merchandise that the purchaser shall not sell or deal in the goods, wares, or merchandise of any other person, firm, corporation, or association of natural or artificial persons: *Provided*, That this act shall not be construed to prohibit the appointment of agents or sole agents for the sale of goods, wares, or merchandise. Any violation of the provisions of this act shall be held to be a contract in restraint of trade among the several States under the provisions of section 1 of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890, and every person who shall be a party to said contract in violation of this act shall, on conviction thereof, be adjudged guilty of a misdemeanor and shall be punished by fine not exceeding $5,000 or by imprisonment for a term not exceeding one year, or by both said punishments, in the discretion of the court, and shall be subject to such other penalties, forfeitures, and suits in equity and actions at law as are prescribed in sections 4, 5, 6, and 7 of an act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890.

So the Republican party had opportunity to correct just exactly these two abuses which have furnished the occasion of this magnificent speech upon this glaring object lesson of national exploitation and outrage. [Applause on the Democratic side.]

Mr. HILL of Connecticut. Mr. Chairman, if the gentleman will yield, I wish to call the attention of the country also to the fact——

Mr. RAINEY. I do not yield for a speech.

Mr. HILL of Connecticut. Will not the gentleman yield for the same purpose that he yielded to the gentleman from Mississippi?

Mr. RAINEY. I will yield to the gentleman for a question.

Mr. HILL of Connecticut. You would not yield to the gentleman from Connecticut for the same purpose that you yielded to the gentleman from Mississippi?

Mr. RAINEY. The gentleman can speak in his own time. I am willing to yield for all questions that anybody wants to ask on this subject, and I will gladly answer every one of them, but I am not half through with my remarks.

Mr. HILL of Connecticut. Well, I will put it in the form of a question. Does the Democratic party when in power exercise the same policy in regard to the tariff that they do when they are out of power? I want to call the gentleman's attention to the fact that the gentleman from Mississippi now suggests that the Democratic party would put a tariff of 15 per cent on watches, but when they were in power they made it 25 per cent. [Laughter on the Republican side.]

Mr. WILLIAMS. Will the gentleman from Illinois permit me? I want to say that 15 per cent on watches now, with the improvements which have been taking place all the time in America in watch making, is a larger duty and a fuller duty in every respect than 25 per cent was then. [Laughter on the Republican side.]

Mr. LACEY. I want to ask the gentleman one question.

Mr. RAINEY. Very well.

Mr. LACEY. Isn't it a good deal easier to collect the 25 cents now than it was to collect 15 cents when the Democratic party made their tariff? [Laughter on the Republican side.]

Mr. WILLIAMS. Not if you have to live on the 25 cents. [Laughter on the Democratic side.]

Mr. RAINEY. Mr. Chairman, we are living now in the present among living issues and not among the issues of long ago. We are discussing issues of the present, and these are the issues that the country want you gentlemen of the other side to discuss; these are the issues they expect you to meet, and these are the issues you will have to meet this fall. [Applause on the Democratic side.] You can not meet them by calling attention to the schedules that have existed heretofore, whether they were Democratic or whether they were Republican schedules; but the country demands now upon these great questions action and they expect you to do something, and you may refuse to do it if you dare. [Loud applause on the Democratic side.]

Now, all of these watches in this store at 180 Broadway have been reimported from England. Every one of them has been reimported. Why does not some gentleman ask me how I know it? Do you want to know how I know that? You do not seem to want to know, but I will tell you anyway. [Laughter.] Before this gentleman started that business, three or four months ago, although he had been in business in this place three or four years before he commenced to make a specialty of reimported American watches, he accumulated a stock of watches purchased abroad, paying for them at the export price over $130,000. How do I know that? You do not ask me how I know it, but you ought to ask. [Laughter.] I will tell you how I know it.

I hold in my hand over $130,000 of American Express Company's receipts showing that within the fifteen months prior to the time he started this particular business, he cabled abroad in American money over $130,000 through the American Express Company for the purpose of purchasing abroad American-made watches.

I can not put this mass of evidence in the RECORD, but I will say to you gentlemen, and I will say to the country, that I propose to keep this evidence here accessible to every one of you, so that you can verify my statement or not, and I challenge any one of you on that side to examine here, at any time in the next two or three weeks, these American Express Company's receipts and see whether or not the statement I have now made is not true. [Applause on the Democratic side.]

The CHAIRMAN. The gentleman's hour has expired.

Mr. McCLEARY of Minnesota. Mr. Chairman, I ask unanimous consent that the gentleman's time may be extended.

The CHAIRMAN. The time is under the control of the gentleman from Tennessee [Mr. MOON].

Mr. MOON of Tennessee. Mr. Chairman, the gentleman was given such time as he desired in which to conclude his remarks.

The CHAIRMAN. If the gentleman from Tennessee desires to yield further, he may do so.

Mr. MOON of Tennessee. Then, Mr. Chairman, I yield to the gentleman such further time as he desires.

The CHAIRMAN. That is, one hour.

Mr. OVERSTREET. Mr. Chairman, I would like to inquire of the gentleman from Tennessee whether he intends that this hour shall continue to-morrow, or whether he desires the gentleman to conclude to-night? I do not intend to ask the gentleman to stop now. I ask him whether the gentleman would conclude to-night?

Mr. RAINEY. I do not know whether I could conclude to-night or not. I would prefer to finish to-morrow, if I can have the time to-morrow.

Mr. MOON of Tennessee. Then I suggest that, with the understanding that the gentleman can have the floor when the committee goes into session to-morrow, that we now rise.

Mr. OVERSTREET. Mr. Chairman, I think it would not be wise to extend an indefinite leave to the gentleman. That might consume all of the day.

Mr. RAINEY. Oh, I will not do that.

Mr. OVERSTREET. I understood that an hour and a half was the time the gentleman would take for his argument.

Mr. RAINEY. I may get through in that time.

Mr. MOON of Tennessee. I understood that also, but he may take another hour.

Mr. RAINEY. I would like to have another hour. I will get through in an hour.

Mr. MOON of Tennessee. Mr. Chairman, to settle this controversy about the time, I yield to the gentleman one more hour.

The CHAIRMAN. The Chair understands the gentleman desires to proceed now.

Mr. RAINEY. Mr. Chairman, I prefer to proceed in the morning, at the opening of the session.

The CHAIRMAN. The Chair desires to call the attention of the gentleman from Indiana [Mr. OVERSTREET] to the fact that the gentleman from Illinois [Mr. RAINEY] states that he would prefer to proceed with his hour to-morrow morning.

Mr. OVERSTREET. Oh, Mr. Chairman, I think we better proceed for a little while longer to-night.

Mr. CLARK of Missouri. Mr. Chairman, it is time to quit now, or "take out," as Mr. Kilgore, of Texas, used to say, and if the gentleman is going to speak an hour he will not gain anything by fooling away a few minutes longer here to-night. He would rather finish the rest of his speech to-morrow, and I think he would get through more quickly.

Mr. WM. ALDEN SMITH. Oh, the gentleman does not want to keep us here all night.

Mr. CLARK of Missouri. Well, you better be looking at your watches now. [Laughter.]

The CHAIRMAN. The committee will be in order. The Chair recognizes the gentleman from Illinois.

Mr. RAINEY. Mr. Chairman, I prefer to proceed in the morning.

Mr. WILLIAMS. Mr. Chairman——

The CHAIRMAN. The gentleman from Illinois has the floor.

Mr. WILLIAMS. Will the gentleman yield?

Mr. RAINEY. Yes.

Mr. WILLIAMS. With the consent of the gentleman from Illinois, I would like to ask the gentleman from Indiana [Mr. OVERSTREET] whether he can not move that the committee do now rise? The gentleman from Illinois can talk with much less fatigue to-morrow than he can now and can finish his remarks more satisfactorily to himself and better for the House. I suggest to the gentleman from Indiana that the committee do now rise.

Mr. OVERSTREET. Mr. Chairman, I will state to the gentleman from Mississippi that I was following what I understood was the definite arrangement between the gentleman from Illinois and myself. He told me that he wished to consume an hour and a half this afternoon. I suggest the gentleman proceed until, say, half past 5 and that then we rise, and that he then conclude his argument to-morrow morning. That was his own arrangement originally.

Mr. WILLIAMS. Would not the gentleman from Illinois rather go ahead to-morrow morning?

Mr. RAINEY. I would rather go ahead to-morrow.

Mr. OVERSTREET. I would ask the gentleman from Illinois if he did not say to me that he wished to proceed for an hour and a half to-night?

Mr. RAINEY. Yes; that is what I told the gentleman. I thought I would get through in an hour and a half.

Mr. OVERSTREET. That was the statement the gentleman made to me.

Mr. RAINEY. But I have been interrupted repeatedly by Members on the other side, and it has taken a great portion of my time to answer questions. I prefer to go ahead to-morrow morning. I think I can finish more quickly than by going on this afternoon.

Mr. OVERSTREET. Do I understand, then, that if we should rise now the gentleman from Illinois will conclude in an hour to-morrow?

Mr. RAINEY. Yes; I will.

Mr. OVERSTREET. Then, Mr. Chairman, I move that the committee do now rise.

The motion was agreed to

Accordingly the committee rose; and the Speaker having resumed the chair, Mr. SHERMAN, Chairman of the Committee of the Whole House on the state of the Union, reported that that committee had had under consideration the bill H. R. 16953—the post-office appropriation bill—and had come to no resolution thereon.

ENROLLED BILLS SIGNED.

The SPEAKER announced his signature to enrolled bills of the following titles:

S. 4825. An act to provide for the construction of a bridge across Rainy River, in the State of Minnesota;

S. 3899. An act granting authority to the Secretary of the Navy, in his discretion, to dismiss midshipmen from the United States Naval Academy and regulating the procedure and punishment in trials for hazing at the said academy;

S. 5182. An act to authorize the construction of a bridge across the Columbia River between Franklin and Benton counties, in the State of Washington;

S. 5183. An act to authorize the construction of a bridge across the Columbia River between Douglas and Kittitas counties, in the State of Washington;

S. 4111. An act to authorize the Chief of Ordnance, United States Army, to receive four 3.6-inch breech-loading field guns, carriages, caissons, limbers, and their pertaining equipment from the State of Connecticut;

S. 5181. An act to authorize the construction of a bridge across the Snake River between Whitman and Columbia counties, in the State of Washington; and

S. 4300. An act to amend section 4414 of the Revised Statutes of the United States, inspectors of hulls and boilers of steam vessels.

Mr. WACHTER, from the Committee on Enrolled Bills, reported that they had examined and found truly enrolled bill of the following title; when the Speaker signed the same:

H. R. 11026. An act to authorize the counties of Holmes and Washington to construct a bridge across Yazoo River, Mississippi.

SENATE BILL REFERRED.

Under clause 2 of Rule XXIV, Senate bill of the following title was taken from the Speaker's table and referred to its appropriate committee, as indicated below:

S. 5059. An act to increase the limit of cost of the post-office at Yankton, S. Dak.—to the Committee on Public Buildings and Grounds.

UNITED STATES COURTS FOR ALABAMA.

The SPEAKER. The following House bill, the title of which the Clerk will report, will lie upon the table, a corresponding Senate bill having passed.

The Clerk read as follows:

A bill (H. R. 16802) to fix the regular terms of the circuit and district courts of the United States for the southern division of the northern district of Alabama, and for other purposes.

LEAVE OF ABSENCE.

By unanimous consent, Mr. CHANEY was granted leave of absence until April 22, on account of important business.

Mr. OVERSTREET. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; and accordingly (at 5 o'clock and 9 minutes p. m.) the House adjourned until to-morrow, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS.

Under clause 2 of Rule XXIV, the following executive communications were taken from the Speaker's table and referred as follows:

A letter from the Secretary of the Interior, transmitting, with a copy of a letter from the Commissioner of Indian Affairs, a favorable recommendation as to the payment to the Santee Sioux and Ponca Indians in Nebraska of a share in the fund in the Treasury to the credit of the Sioux Indians—to the Committee on Indian Affairs, and ordered to be printed.

A letter from the Acting Secretary of the Treasury, transmitting an estimate of appropriation for repairs of the U. S. S. *Bancroft* for use as a revenue cutter—to the Committee on Appropriations, and ordered to be printed.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the several Calendars therein named, as follows:

Mr. GROSVENOR, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the

Senate (S. 4339) to amend section 4502 of the Revised Statutes of the United States, relating to bonds and oaths of shipping commissioners, reported the same without amendment, accompanied by a report (No. 2902); which said bill and report were referred to the House Calendar.

Mr. CURTIS, from the Committee on Indian Affairs, to which was referred the bill of the House (H. R. 17719) to prevent the copying, selling, or disposing of any rolls of citizenship of the Five Civilized Tribes of Indians, and providing punishment therefor, reported the same with amendment, accompanied by a report (No. 2907); which said bill and report were referred to the House Calendar.

REPORTS OF COMMITTEES ON PRIVATE BILLS AND RESOLUTIONS.

Under clause 2 of Rule XIII, private bills and resolutions of the following titles were severally reported from committees, delivered to the Clerk, and referred to the Committee of the Whole House, as follows:

Mr. GROSVENOR, from the Committee on the Merchant Marine and Fisheries, to which was referred the bill of the Senate (S. 4954) authorizing Capt. Ejnar Mikkelsen to act as master of an American vessel, reported the same without amendment, accompanied by a report (No. 2903); which said bill and report were referred to the Private Calendar.

Mr. BURKE of South Dakota, from the Committee on Indian Affairs, to which was referred the bill of the House H. R. 15898, reported in lieu thereof a resolution (H. J. Res. 133) referring to the Court of Claims the papers in the case of Clement N. Vann and William P. Adair, accompanied by a report (No. 2904); which said resolution and report were referred to the Private Calendar.

Mr. GOLDFOGLE, from the Committee on Claims, to which was referred the bill of the House (H. R. 7028) for the relief of the Postal Telegraph Cable Company, reported the same without amendment, accompanied by a report (No. 2905); which said bill and report were referred to the Private Calendar.

Mr. OLCOTT, from the Committee on the District of Columbia, to which was referred the bill of the Senate (S. 2270) for the relief of Nicola Masino, of the District of Columbia, reported the same without amendment, accompanied by a report (No. 2906); which said bill and report were referred to the Private Calendar.

PUBLIC BILLS, RESOLUTIONS, AND MEMORIALS.

Under clause 3 of Rule XXII, bills, resolutions, and memorials of the following titles were introduced and severally referred as follows:

By Mr. MAYNARD: A bill (H. R. 17793) authorizing the erection of a hotel upon the Government reservation at Fort Monroe—to the Committee on Military Affairs.

By Mr. HUGHES: A bill (H. R. 17794) to amend section 641 of the Revised Statutes of the United States—to the Committee on the Judiciary.

By Mr. SIMS: A bill (H. R. 17832) to close certain alleys in the District of Columbia—to the Committee on the District of Columbia.

By Mr. BURKE of South Dakota, from the Committee on Indian Affairs: A joint resolution (H. J. Res. 133) referring to the Court of Claims the bill H. R. 15898—to the House Calendar.

By Mr. WILLIAMS: A resolution (H. Res. 391) directed to the Department of Commerce and Labor, concerning certain information about railways and canals—to the Committee on Railways and Canals.

By Mr. DUNWELL: A memorial from the legislature of the State of New York, proposing an amendment to the Constitution of the United States prohibiting polygamy—to the Committee on the Judiciary.

PRIVATE BILLS AND RESOLUTIONS.

Under clause 1 of Rule XXII, private bills and resolutions of the following titles were introduced and severally referred as follows:

By Mr. ALLEN of Maine: A bill (H. R. 17795) granting an increase of pension to Mary P. Nauman—to the Committee on Pensions.

By Mr. BEALL of Texas: A bill (H. R. 17796) granting an increase of pension to T. C. Alexander—to the Committee on Pensions.

By Mr. BURLEIGH: A bill (H. R. 17797) granting an increase of pension to Wilbur F. Lane—to the Committee on Invalid Pensions.

By Mr. CHANEY: A bill (H. R. 17798) to reinstate John W. Gray in his class at the Naval Academy—to the Committee on Naval Affairs.

By Mr. CLARK of Florida: A bill (H. R. 17799) granting a pension to Joseph R. Sullivan—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17800) granting a pension to William G. Thomas—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17801) granting an increase of pension to Julia C. Vanzant—to the Committee on Pensions.

Also, a bill (H. R. 17802) granting an increase of pension to Henry T. Buss—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17803) granting an increase of pension to David Raulerson—to the Committee on Pensions.

By Mr. GILBERT of Indiana: A bill (H. R. 17804) granting an increase of pension to Samuel C. Hoover—to the Committee on Invalid Pensions.

By Mr. HAY: A bill (H. R. 17805) for the relief of Rebecca J. Fisher—to the Committee on Claims.

By Mr. JONES of Washington: A bill (H. R. 17806) granting an increase of pension to Enoch Boyle—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17807) granting an increase of pension to Benson S. Philbrick—to the Committee on Invalid Pensions.

By Mr. KNOWLAND: A bill (H. R. 17808) to correct the military record of Adolph M. Clay—to the Committee on Military Affairs.

By Mr. KELIHER: A bill (H. R. 17809) granting a pension to William Barrett—to the Committee on Invalid Pensions.

By Mr. LACEY: A bill (H. R. 17810) granting a pension to Saul Caulson—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17811) granting a pension to Jacob Helminger—to the Committee on Invalid Pensions.

By Mr. McGUIRE: A bill (H. R. 17812) donating lands in Oklahoma Territory for educational purposes—to the Committee on the Public Lands.

By Mr. PATTERSON of North Carolina: A bill (H. R. 17813) for the relief of Albert L. Scott, surviving partner of the firm composed of E. L. Pemberton, James R. Lee, and Albert L. Scott—to the Committee on War Claims.

By Mr. PATTERSON of South Carolina: A bill (H. R. 17814) granting an increase of pension to Simon E. Chamberlin—to the Committee on Invalid Pensions.

By Mr. TAYLOR of Ohio: A bill (H. R. 17815) granting a pension to John Joyce—to the Committee on Pensions.

Also, a bill (H. R. 17816) granting a pension to Robert B. Foster—to the Committee on Pensions.

Also, a bill (H. R. 17817) granting an increase of pension to John Grimm—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17818) granting an increase of pension to John V. Larrimer—to the Committee on Invalid Pensions.

By Mr. REEDER: A bill (H. R. 17819) granting an increase of pension to David N. Hamilton—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17820) granting an increase of pension to James M. Dixon—to the Committee on Invalid Pensions.

By Mr. RHINOCK: A bill (H. R. 17821) granting an increase of pension to Herman Young—to the Committee on Invalid Pensions.

By Mr. RICHARDSON of Kentucky: A bill (H. R. 17822) granting an increase of pension to Moses Hancock—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17823) granting an increase of pension to R. P. Bristow—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17824) granting a pension to Mariah E. Orange—to the Committee on Invalid Pensions.

By Mr. RIXEY: A bill (H. R. 17825) granting an increase of pension to Bolivar Ward—to the Committee on Pensions.

By Mr. SIMS: A bill (H. R. 17826) granting a pension to Wincy A. Lindsey—to the Committee on Invalid Pensions.

By Mr. TRIMBLE: A bill (H. R. 17827) for the relief of Thomas N. Arnold—to the Committee on War Claims.

By Mr. TYNDALL: A bill (H. R. 17828) granting an increase of pension to Mark T. Campbell—to the Committee on Invalid Pensions.

By Mr. WANGER: A bill (H. R. 17829) granting an increase of pension to Gerrit S. Nichols—to the Committee on Invalid Pensions.

Also, a bill (H. R. 17830) granting an increase of pension to William R. Snell—to the Committee on Invalid Pensions.

By Mr. SCHNEEBELI: A bill (H. R. 17831) granting an increase of pension to James Bowman—to the Committee on Invalid Pensions.

CHANGE OF REFERENCE.

Under clause 2 of Rule XXII, committees were discharged from the consideration of bills of the following titles; which were thereupon referred as follows:

A bill (H. R. 17776) to provide a suitable medal for Charles P. Bragg—Committee on Military Affairs discharged, and referred to the Committee on Naval Affairs.

A bill (H. R. 17738) granting an increase of pension to John H. Hale—Committee on Invalid Pensions discharged, and referred to the Committee on Pensions.

PETITIONS, ETC.

Under clause 1 of Rule XXII, the following petitions and papers were laid on the Clerk's desk and referred as follows:

By the SPEAKER: Petition of the Preachers' Meeting of the Methodist Episcopal Church in and near New York City, for Sunday closing of the Jamestown Fair—to the Select Committee on Industrial Arts and Expositions.

Also, petition of the Woman's Home Missionary Society of the First Methodist Church of Evanston, Ill., for prohibition of liquor traffic in the Indian country of Alaska—to the Committee on the Territories.

Also, paper to accompany bill for relief of Rebecca J. Fisher—to the Committee on Invalid Pensions.

By Mr. ACHESON: Petition of the Keystone Watch Case Company, for bill H. R. 14604—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Musicians' Mutual Protective Union, for bill H. R. 4748—to the Committee on Naval Affairs.

By Mr. AIKEN: Paper to accompany bill for relief of Thomas J. Mackey—to the Committee on Pensions.

By Mr. ANDREWS: Petition of I. W. Enke and 20 others, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

Also, petition of the executive council of the American Federation of Labor, against bill H. R. 5281 (the pilotage bill)—to the Committee on the Merchant Marine and Fisheries.

By Mr. BURLEIGH: Petition of Morning Light Grange, Maine, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

Also, petition of Medora C. Small, president of the Tuesday Club, of Oakland, Me., and 35 others of the Federation of Women's Clubs, for an appropriation for investigation of the industrial condition of women—to the Committee on Appropriations.

Also, paper to accompany bill for relief of George G. Spurr (previously referred to the Committee on Invalid Pensions)—to the Committee on Pensions.

By Mr. CHANEY: Petition of Frank Boston, John J. Triste, and F. N. Muentzer, of Vincennes, Ind., for bill H. R. 7067 (previously referred to the Committee on Invalid Pensions)—to the Committee on Indian Affairs.

By Mr. COOPER of Pennsylvania: Petition of the Courier, against the tariff on linotype machines—to the Committee on Ways and Means.

Also, petition of the Keystone Watch Case Company, for bill H. R. 14604, relative to spuriously stamped articles of merchandise—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Woman's Culture Club, of Connellsville, Pa., of the General Federation of Women's Clubs, for investigation of the industrial condition of women—to the Committee on Appropriations.

Also, petition of the board of State harbor commissioners, of San Francisco, for an appropriation to remove rocks from the harbor and bar—to the Committee on Rivers and Harbors.

By Mr. COOPER of Wisconsin: Petition of Local Union No. 59, American Federation of Musicians, for bill H. R. 8748, relative to the band of the United States Marine Corps—to the Committee on Naval Affairs.

By Mr. DARRAGH: Petition of citizens of Osceola and Lake counties, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. DRESSER: Petition of the Women's Literary Club of Bradford, Pa., and the V. I. A. Club of Mount Jewett, Pa., of the General Federation of Women's Clubs, for an appropriation to investigate the industrial condition of women in the United States—to the Committee on Appropriations.

Also, petition of the committee on forestry of the State Federation of Pennsylvania Women, for the Morris law for the preservation of Minnesota forests at the headwaters of the Mississippi River—to the Committee on Agriculture.

Also, petition of the committee on forestry of the State Federation of Pennsylvania Women, for forest reservations in the White Mountains and the Southern Appalachian Mountains—to the Committee on Agriculture.

Also, petition of the State Federation of Pennsylvania Women, for preservation of Niagara Falls—to the Committee on Rivers and Harbors.

Also, petition of citizens of Pennsylvania, for bill H. R. 10099 (the Hepburn bill)—to the Committee on Interstate and Foreign Commerce.

By Mr. DUNWELL: Petition of the New York Produce Exchange, against the "tonnage-dues" feature of the ship-sibsidy bill—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the American Federation of Labor, for bill H. R. 5281—to the Committee on the Merchant Marine and Fisheries.

Also, petition of Kate Lathrop Lyon, for bill H. R. 4462—to the Committee on the District of Columbia.

Also, petition of Woman's Sixteenth Street Improvement Association, for a public reservation in the District of Columbia on the land bounded by Florida avenue on the south and Sixteenth street on the west, Meridian Hill—to the Committee on the District of Columbia.

Also, petition of the Inter-Municipal Research Commission, favoring bills H. R. 4462 and S. 2962 and Mr. GARDNER's measure relative to investigation of the labor of women and children—to the Committee on the District of Columbia.

Also, petition of the Merchants' Marine League, favoring the Congressional Merchants' Marine Commissioners' shipping bill—to the Committee on the Merchant Marine and Fisheries.

By Mr. FULLER: Petition of the National Wholesale Lumber Dealers' Association, for bill H. R. 5281 (the Littlefield pilotage bill)—to the Committee on the Merchant Marine and Fisheries.

Also, petition of the California Fruit Growers' Exchange, favoring Government control of railway rates and private car lines—to the Committee on Interstate and Foreign Commerce.

Also, petition of the Illinois Manufacturers' Association, for an appropriation for a deep waterway from the Great Lakes to the Gulf of Mexico—to the Committee on Rivers and Harbors.

By Mr. GRANGER: Petition of the Musicians' Protective Union, Local No. 198, American Federation of Musicians, of Providence, R. I., for bill H. R. 8748—to the Committee on Naval Affairs.

By Mr. HENRY of Texas: Petition of J. R. Moss and many other citizens of Texas, for an appropriation by Congress to send a commission to Marlin, Tex., to investigate the value of its mineral water—to the Committee on Appropriations.

By Mr. HINSHAW: Petition of members of the Hall County (Nebr.) bar, favoring the Burkett bill relative to dividing Nebraska into two judicial districts—to the Committee on the Judiciary.

By Mr. HUBBARD: Petition of citizens of Iowa, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. HUMPHREY of Washington: Petition of citizens of Washington, against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

By Mr. KAHN: Petition of Williams, Diamond & Co., of San Francisco, for the ship-subsidy bill—to the Committee on the Merchant Marine and Fisheries.

By Mr. KELIHER: Petition of the trustees of Boston Athenæum, against proposed amendment to the copyright law—to the Committee on Patents.

Also, petition of the American Federation of Labor, against bill H. R. 5281—to the Committee on the Merchant Marine and Fisheries.

Also, petition of Boston Section of the Council of Jewish Women, favoring bill H. R. 4462—to the Committee on the District of Columbia.

Also, petition of citizens of Massachusetts, against wrongs perpetrated in the Kongo Free State—to the Committee on Foreign Affairs.

By Mr. KETCHAM: Petition of citizens of Catskill, N. Y., against destruction of Niagara Falls—to the Committee on Rivers and Harbors.

By Mr. KINKAID: Petition of John L. Hamilton, for bill H. R. 8973—to the Committee on Banking and Currency.

Also, petition of W. S. Jackson et al., against consolidation of third and fourth class mail matter—to the Committee on the Post-Office and Post-Roads.

Also, petition of Lee Park (Nebr.) Farmers' Club, for a parcels-post law—to the Committee on the Post-Office and Post-Roads.

Also, petition of citizens of Oklahoma, for the statehood bill—to the Committee on the Territories.

Also, petition of citizens of Broken Bow, Nebr., against religious legislation in the District of Columbia—to the Committee on the District of Columbia.

Also, petition of B. A. Burdick, against the conduct of affairs in the Kongo Free State—to the Committee on Foreign Affairs.

By Mr. LACEY: Petition of citizens of New Sharon, Iowa, and paper to accompany bill for relief of Jacob Helminger—to the Committee on Invalid Pensions.

By Mr. LAMB: Petition of Liberty Council, No. 13; May Council, No. 31, and Fairmount Council, No. 70, Daughters of Liberty, for the Penrose bill (S. 4357) for the restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. LAWRENCE: Petition of Sheffield Grange, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

Also, petition of 77 citizens of Northfield, Mass., against atrocities in the Kongo Free State—to the Committee on Foreign Affairs.

By Mr. LINDSAY: Petition of the Woman's Sixteenth Street Improvement Association, for Meridian Hill, in the District of Columbia, as a public reservation—to the Committee on Public Buildings and Grounds.

Also, petition of James D. Leary, of Brooklyn, N. Y., for bill H. R. 5281—to the Committee on the Merchant Marine and Fisheries.

By Mr. LITTAUER: Paper to accompany bill for relief of Peter Van Antwerp—to the Committee on Invalid Pensions.

By Mr. LITTLEFIELD: Petition of Local Union No. 407, American Federation of Musicians, for bill H. R. 8748, for relief of civilian musicians—to the Committee on Naval Affairs.

Also, petition of Lizzie S. Kneeland, president of the Parlor Congress Club, of Auburn, Me., and Mrs. A. L. Talbot, president of the Sorosis Club, of Lewiston, Me., of the General Federation of Women's Clubs, for an appropriation to investigate the industrial condition of women in the United States—to the Committee on Appropriations.

Also, petition of citizens of Maine, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. McKINNEY: Petition of citizens of Illinois, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. McNARY: Petition of H. S. Hovey, for the metric system—to the Committee on Coinage, Weights, and Measures.

By Mr. MAYNARD: Petition of citizens of Norfolk, Va., and Ideal Council, No. 71, favoring restriction of immigration—to the Committee on Immigration and Naturalization.

By Mr. MICHALEK: Petition of the International Association of Master House Painters and Decorators, for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. PATTERSON of South Carolina: Paper to accompany bill for relief of Simon E. Chamberlin—to the Committee on Invalid Pensions.

By Mr. RICHARDSON of Alabama: Petition of citizens of Florence, Ala., for repeal of revenue tax on denaturized alcohol—to the Committee on Ways and Means.

By Mr. SCOTT: Petition of A. F. Hill et al., of Bronson, Kans., against consolidation of third and fourth class mail matter—to the Committee on the Post-Office and Post-Roads.

By Mr. SHERMAN: Paper to accompany bill for relief of Nettie A. Hill—to the Committee on Invalid Pensions.

By Mr. SIMS: Paper to accompany bill for relief of John Dillahunty—to the Committee on War Claims.

By Mr. SULZER: Petition of Mrs. Henry Parker, for a national military park of the battle ground around Petersburg, Va.—to the Committee on Military Affairs.

By Mr. WEBB: Petition of citizens of Gaston County, N. C., in favor of the Hepburn-Dolliver temperance bill (H. R. 3159)—to the Committee on the Judiciary.

SENATE.

FRIDAY, *April 6, 1906.*

Prayer by Right Rev. JAMES S. JOHNSTON, D. D., bishop of the diocese of western Texas.

The Secretary proceeded to read the Journal of yesterday's proceedings, when, on request of Mr. LODGE, and by unanimous consent, the further reading was dispensed with.

The VICE-PRESIDENT. The Journal stands approved.

FINDINGS OF COURT OF CLAIMS.

The VICE-PRESIDENT laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of the Trustees of the African Methodist Episcopal Church of Marietta, Ga., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

He also laid before the Senate a communication from the assistant clerk of the Court of Claims, transmitting a certified copy of the findings of fact filed by the court in the cause of the Trustees of the Alfred Street Baptist Church, of Alexandria, Va., *v.* The United States; which, with the accompanying paper, was referred to the Committee on Claims, and ordered to be printed.

MESSAGE FROM THE HOUSE.

A message from the House of Representatives, by Mr. W. J. BROWNING, its Chief Clerk, announced that the House had agreed to the amendments of the Senate to the bill (H. R. 13151) granting a pension to Christopher C. Harlan.

The message also announced that the House had agreed to the amendment of the Senate to the bill (H. R. 8891) granting an increase of pension to Josephine Rogers.

ENROLLED BILLS SIGNED.

The message further announced that the Speaker of the House had signed the following enrolled bills; and they were thereupon signed by the Vice-President:

S. 3899. An act granting authority to the Secretary of the Navy, in his discretion, to dismiss midshipmen from the United States Naval Academy and regulating the procedure and punishment in trials for hazing at the said academy;

S. 4111. An act to authorize the Chief of Ordnance, United States Army, to receive four 3.6-inch breech-loading field guns, carriages, caissons, limbers, and their pertaining equipment from the State of Connecticut;

S. 4300. An act to amend section 4414 of the Revised Statutes of the United States, inspectors of hulls and boilers of steam vessels;

S. 5181. An act to authorize the construction of a bridge across the Snake River between Whitman and Columbia counties, in the State of Washington;

S. 5182. An act to authorize the construction of a bridge across the Columbia River between Franklin and Benton counties, in the State of Washington;

S. 5183. An act to authorize the construction of a bridge across the Columbia River between Douglas and Kittitas counties, in the State of Washington; and

H. R. 11026. An act to authorize the counties of Holmes and Washington to construct a bridge across Yazoo River, Mississippi.

PETITIONS AND MEMORIALS.

The VICE-PRESIDENT presented a petition of the Woman's Missionary Society of the First Methodist Church of Evanston, Ill., praying for the enactment of legislation to prohibit the liquor traffic in all of the Indian country of Alaska; which was referred to the Committee on Territories.

He also presented the petition of A. Purdee, in behalf of the ex-Union soldiers, of Marianna, Fla., praying for the enactment of legislation to amend section 4707 of the general pension laws of the United States; which was referred to the Committee on Pensions.

Mr. LODGE. I present resolutions of the Chamber of Commerce of the State of New York, in favor of the passage of the Philippine tariff bill. The resolutions are brief, and I ask that they be printed in the RECORD and referred to the Committee on Commerce.

Mr. PLATT. I will say to the Senator that I was just about to offer similar resolutions.

There being no objection, the resolutions were referred to the Committee on the Philippines, and ordered to be printed in the RECORD, as follows:

[Chamber of Commerce of the State of New York. Founded A. D. 1768.]

At the monthly meeting of the chamber of commerce, held April 5, 1906, the following preamble and resolutions, reported by its committee on foreign commerce and the revenue laws, were adopted:

Whereas the Committee on the Philippines of the Senate has, by a vote of eight to five, declined to report, even for consideration, the Philippine tariff bill; and

Whereas this bill, apart from its economic aspect, seems to this chamber to involve a principle that is vital to a colonial policy that is to be either wise or just, namely, the principle that a colony is to be administered in its own interest and not in the interest of the governing country; and

Whereas even in its economic aspect the effect of this bill upon the United States can be but slight, while its effect upon the Philippines may be advantageous in the highest degree: Therefore, be it

Resolved, That the Chamber of Commerce of the State of New York hereby urges upon the Committee on the Philippines of the Senate and upon the Senate prompt and favorable consideration of this important measure: And be it further

Resolved, That copies of these preambles and resolutions be transmitted to the appropriate authorities at Washington, and to kindred commercial bodies, with the request to the latter that they take similar action at an early day.

A true copy.

[SEAL.]

MORRIS K. JESSUP, *President.*
GEO. WILSON, *Secretary.*

NEW YORK, *April 5, 1906.*